UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

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

For the Quarterly Period Ended March 31, 2014

OR

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

For the Transition Period from to

Commission File Number 001-36189

Tandem Diabetes Care, Inc.
(Exact name of registrant as specified in its charter)

Delaware	**20-4327508**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
11045 Roselle Street San Diego, California	**92121**
(Address of principal executive offices)	**(Zip Code)**

(858) 366-6900
Registrant's telephone number, including area code

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

Title of Each Class	Name of Exchange on Which Registered
Common Stock, par value $0.001 per share	**The NASDAQ Stock Market LLC**

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

Indicate by check mark whether the registrant has submitted electronically 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 (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

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

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☒ (Do not check if a smaller reporting company)	Smaller reporting company	☐

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

As of April 30, 2014, there were 22,980,784 shares of the registrant's Common Stock outstanding.

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PART I. FINANCIAL INFORMATION

Item 1. ***Financial Statements***

TANDEM DIABETES CARE, INC.
CONDENSED BALANCE SHEETS

	March 31, 2014 (Unaudited)	December 31, 2013
Assets		
Current assets:		
Cash and cash equivalents	$ 76,825,800	$ 124,385,137
Restricted cash	2,050,000	2,050,000
Short-term investments	33,947,943	5,095,331
Accounts receivable, net	3,423,030	5,298,502
Inventory	10,164,723	10,330,156
Prepaid and other current assets	1,947,727	1,830,056
Total current assets	128,359,223	148,989,182
Property and equipment, net	10,813,661	9,885,985
Patents, net	2,617,890	2,697,220
Other long term assets	598,143	642,746
Total assets	$ 142,388,917	$ 162,215,133
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	$ 2,053,359	$ 2,352,037
Accrued expense	1,488,681	1,873,565
Employee-related liabilities	6,574,937	5,876,011
Deferred revenue	382,888	411,423
Deferred rent—current	368,784	368,784
Other current liabilities	2,266,892	3,717,412
Total current liabilities	13,135,541	14,599,232
Notes payable—long-term	29,444,846	29,396,571
Deferred rent—long-term	1,819,222	1,886,508
Other long-term liabilities	728,735	795,640
Total liabilities	45,128,344	46,677,951
Commitments and contingencies		
Stockholders' equity:		
Common stock, $0.001 par value; 100,000,000 shares authorized, 22,978,219 shares and 22,925,614 shares issued and outstanding at March 31, 2014 (unaudited) and December 31, 2013, respectively	22,978	22,926
Additional paid-in capital	288,376,702	284,705,251
Accumulated other comprehensive income	13,833	—
Accumulated deficit	(191,152,940)	(169,190,995)
Total stockholders' equity	97,260,573	115,537,182
Total liabilities and stockholders' equity	$ 142,388,917	$ 162,215,133

See accompanying notes to condensed financial statements.

TANDEM DIABETES CARE, INC.
CONDENSED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(Unaudited)

	Three Months Ended March 31,	
	2014	2013
Sales	$ 8,065,468	$ 5,458,407
Cost of sales	7,198,810	3,418,000
Gross profit	866,658	2,040,407
Operating expenses:		
Selling, general and administrative	18,040,905	6,884,077
Research and development	3,663,320	2,322,477
Total operating expenses	21,704,225	9,206,554
Operating loss	(20,837,567)	(7,166,147)
Other income (expense), net		
Interest and other income	18,499	226
Interest and other expense	(1,142,877)	(1,167,175)
Change in fair value of stock warrants	—	(2,830,380)
Total other expense, net	(1,124,378)	(3,997,329)
Net loss	$(21,961,945)	$(11,163,476)
Other comprehensive gain:		
Unrealized gain on short-term investments	13,833	—
Comprehensive loss	$(21,948,112)	$(11,163,476)
Net loss per share, basic and diluted	$ (0.96)	$ (53.77)
Weighted average shares used to compute basic and diluted net loss per share	22,936,195	207,609

See accompanying notes to condensed financial statements.

TANDEM DIABETES CARE, INC.
CONDENSED STATEMENTS OF CASH FLOWS
(Unaudited)

	Three Months Ended March 31,	
	2014	2013
Operating activities		
Net loss	$ (21,961,945)	$(11,163,476)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization expense	920,997	784,002
Provision for allowance for doubtful accounts	54,351	44,529
Provision for inventory reserve	260,104	23,808
Interest expense related to amortization of debt discount and debt issuance costs	92,877	283,193
Change in fair value of common and preferred stock warrants	—	2,830,380
Amortization of discount on short-term investment	(5,714)	—
Stock-based compensation expense	3,771,057	56,009
Changes in operating assets and liabilities:		
Restricted cash	—	(332,604)
Accounts receivable	1,821,121	151,755
Inventory	(188,085)	(2,506,954)
Prepaid and other current assets	(117,671)	805,568
Accounts payable	(481,045)	(893,254)
Accrued expense	(384,884)	(126,895)
Employee-related liabilities	698,926	1,068,243
Other current liabilities	(1,277,320)	2,483,560
Deferred revenue	(28,535)	(1,844,144)
Deferred rent	(67,286)	(141,137)
Other long term liabilities	(66,905)	(333,141)
Net cash used in operating activities	(16,959,957)	(8,810,558)
Investing activities		
Purchase of short-term investments	(28,833,065)	—
Purchase of property and equipment	(1,619,864)	(901,111)
Purchase of patents	(173,200)	(500,000)
Net cash used in investing activities	(30,626,129)	(1,401,111)
Financing activities		
Issuance of notes payable, net of issuance costs	—	28,874,505
Restricted cash in connection with notes payable	—	(2,000,000)
Principal payments on notes payable	—	(4,396,323)
Proceeds from issuance of common stock for cash and exercise of common stock options	26,749	8,460
Net cash provided by financing activities	26,749	22,486,642
Net (decrease) increase in cash and cash equivalents	(47,559,337)	12,274,973
Cash and cash equivalents at beginning of period	124,385,137	17,162,730
Cash and cash equivalents at end of period	$ 76,825,800	$ 29,437,703
Supplemental disclosures of cash flow information		
Interest paid	$ (1,050,000)	$ (1,125,000)
Taxes paid	$ (87,853)	$ (16,957)
Supplemental schedule of noncash investing and financing activities		
Unrealized gain on short-term investments	$ 13,833	$ —
Property and equipment included in accounts payable	$ 149,479	$ 25,045
Common warrants issued	—	$ 437,268

See accompanying notes to condensed financial statements.

1. Organization and Basis of Presentation

The Company

Tandem Diabetes Care, Inc. is a medical device company focused on the design, development and commercialization of products for people with insulin-dependent diabetes. Unless the context requires otherwise, the terms the "Company" or "Tandem" refer to Tandem Diabetes Care, Inc.

The Company designed and commercialized its flagship product, the t:slim Insulin Delivery System, or t:slim, based on its proprietary technology platform and unique consumer-focused approach. The U.S. Food and Drug Administration ("FDA") cleared t:slim in November 2011 and the Company commenced commercial sales of t:slim in the United States in the third quarter of 2012.

Tandem was originally incorporated in the state of Colorado on January 27, 2006 under the name Phluid Inc. On January 7, 2008, the Company was re-incorporated in the state of Delaware for the purposes of changing its legal name from Phluid Inc. to Tandem Diabetes Care, Inc. and changing its state of incorporation from Colorado to Delaware.

Basis of Presentation

The Company has prepared the accompanying unaudited condensed financial statements in accordance with accounting principles generally accepted in the United States of America for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and disclosures required by generally accepted accounting principles for complete financial statements. In the opinion of management, all adjustments which are of a normal and recurring nature, considered necessary for a fair presentation have been included.

Interim financial results are not necessarily indicative of results anticipated for the full year. These unaudited condensed financial statements should be read in conjunction with the Company's audited financial statements and footnotes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2013, from which the balance sheet information herein was derived.

Initial Public Offering

In November 2013, the Company completed its initial public offering of 8,000,000 shares of its common stock at a public offering price of $15.00 per share. Net cash proceeds from the initial public offering were approximately $108.3 million, after deducting underwriting discounts, commissions and estimated offering related transaction costs payable by the Company. In November 2013, the underwriters also exercised their overallotment option and purchased an additional 1,200,000 shares of the Company's common stock, from which the Company received cash proceeds, net of underwriting discounts and commissions, of approximately $16.7 million. In connection with the closing of the initial public offering, all of the Company's shares of convertible preferred stock outstanding at the time of the offering were automatically converted into 13,403,747 shares of common stock. In addition, all outstanding preferred stock warrants were automatically converted into warrants to purchase an aggregate 1,171,352 shares of common stock.

Reverse Stock Splits

In October 2013, the Board of Directors approved a 1-for-1.6756 reverse stock split of the Company's common stock. All share and per share information included in the accompanying unaudited condensed financial statements and notes to the unaudited condensed financial statements give retroactive effect to this reverse stock split of the common stock.

Voluntary Recall

On January 10, 2014, the Company announced a voluntary recall of select lots of cartridges used with the t:slim that may be at risk of leaking. The cause of the recall was identified during the Company's internal product testing. The recall was expanded on January 20, 2014 to include additional lots of affected cartridges used with the t:slim. The Company incurred approximately $1.7 million in direct costs associated with the recall. The Company recorded a cost of sales charge of approximately $1.3 million in the fourth quarter of 2013 and recorded a cost of sales charge for the remainder in the first quarter of 2014 for affected cartridges shipped in the first quarter of 2014. The Company does not currently expect any further direct financial impact of the recall beyond these costs. The total cost of the recall consisted of approximately $0.7 million associated with the return and replacement of affected cartridges in the field and approximately $1.0 million for the write-off of affected cartridges within the Company's internal inventory.

2. Summary of Significant Accounting Policies

Use of Estimates

The preparation of the financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses, and the disclosure of contingent assets and liabilities in the Company's financial statements and accompanying notes as of the date of financial statements. Actual results could differ from those estimates and assumptions.

Restricted Cash

Restricted cash as of March 31, 2014 represents a $2.0 million minimum cash balance requirement in connection with the Capital Royalty Term Loan (see Note 6 "Loan Agreements"), and $50,000 cash collateral against the Company's corporate credit card.

Accounts Receivable

The Company grants credit to various customers in the normal course of business. The Company maintains an allowance for doubtful accounts for potential credit losses. Provisions are made, generally, for receivables greater than 120 days past due and based upon a specific review of other outstanding invoices. Uncollectible accounts are written off against the allowance after appropriate collection efforts have been exhausted and when it is deemed that a balance is uncollectible.

Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash, cash equivalents, short-term investments and accounts receivable. The Company maintains deposit accounts in federally insured financial institutions in excess of federally insured limits. The Company also maintains investments in money market funds that are not federally insured. Additionally, the Company has established guidelines regarding investment instruments and their maturities, which are designed to maintain preservation of principal and liquidity.

The following table summarizes customers who accounted for 10% or more of net accounts receivable:

	March 31, 2014	December 31, 2013
CCS Medical, Inc.	21.6%	21.4%
Edgepark Medical Supplies, Inc.	N/A	13.1%

The following table summarizes customers who accounted for 10% or more of sales for the periods presented:

	Three Months Ended March 31,	
	2014	2013
CCS Medical, Inc.	17.2%	N/A
Edgepark Medical Supplies, Inc.	15.8%	19.5%

Fair Value of Financial Instruments

The carrying amounts of cash and cash equivalents, accounts receivable, notes receivable, accounts payable, accrued expense, and employee-related liabilities are reasonable estimates of their fair value because of the short maturity of these items. Short-term investments are carried at fair value. Based on the borrowing rates currently available for loans with similar terms, the Company believes that the fair value of its long-term debt approximates its carrying value.

Revenue Recognition

Revenue is generated in the United States from the sale of the t:slim Pump, disposable cartridges and infusion sets to individual customers and third-party distributors that re-sell the product to insulin-dependent diabetes customers. The Company is paid directly by customers who use the products, distributors and third-party payors.

Revenue is recognized when persuasive evidence of an arrangement exists, delivery has occurred and title passed, the price is fixed or determinable, and collectability is reasonably assured. These criteria are applied as follows:

- The evidence of an arrangement generally consists of contractual arrangements with distributors or direct customers.
- Transfer of title and risk and rewards of ownership are passed upon shipment of the pump to distributors or upon delivery to the customer.
- The selling prices are fixed and agreed upon based on the contracts with distributors, the customer and contracted insurance payors, if applicable. For sales to customers associated with insurance providers with whom there is no contract, revenue is recognized upon collection of cash at which time the price is determinable. The Company generally does not offer rebates to its distributors and customers.
- The Company considers the overall creditworthiness and payment history of the distributor, customer and the contracted insurance payor in concluding whether collectability is reasonably assured.

Prior to the first quarter of 2013, t:slim Pump sales were recorded as deferred revenue until the Company's 30-day right of return expired because it did not have sufficient history to be able to reasonably estimate returns. At December 31, 2012, $1.9 million was recorded as deferred revenue. Beginning in the first quarter of 2013, the Company began recognizing t:slim Pump revenue when all the revenue recognition criteria above are met, as it established sufficient history in order to reasonably estimate product returns. As a result of this change, a one-time adjustment was recorded during the three month period ended March 31, 2013, to recognize previously deferred revenue and cost of sales of $1.9 million and $1.1 million, respectively.

Revenue Recognition for Arrangements with Multiple Deliverables

The Company considers the deliverables in its product offering as separate units of accounting and recognizes deliverables as revenue upon delivery only if (i) the deliverable has standalone value and (ii) if the arrangement includes a general right of return relative to the delivered item(s), delivery or performance of the undelivered item(s) is probable and substantially controlled by us. The Company allocates consideration to the separate units of accounting, unless the undelivered elements were deemed perfunctory and inconsequential. The Company uses the relative selling price method, in which allocation of consideration is based on vendor-specific objective evidence ("VSOE") if available, third-party evidence ("TPE"), or if VSOE and TPE are not available, management's best estimate of a standalone selling price ("ESP") for the undelivered elements.

In February 2013, the FDA cleared t:connect, the Company's cloud-based data management application, which is made available upon purchase by t:slim Pump customers. This service is deemed an undelivered element at the time of the t:slim sale. Because the Company has neither VSOE nor TPE for this deliverable, the allocation of revenue is based on the Company's ESP. The Company establishes its ESP based on estimated cost to provide such services, including consideration for a reasonable profit margin and corroborated by comparable market data. The Company allocates fair value based on management's ESP to this element at the time of sale and recognizes the revenue over the four year hosting period. Deferred revenue for the t:connect hosting services was $0.3 million and $0.2 million at March 31, 2014 and December 31, 2013, respectively. All other undelivered elements at the time of sale are deemed inconsequential or perfunctory.

Product Returns

The Company offers a 30-day right of return for its t:slim Pump customers from the date of shipment, provided a physician's confirmation of the medical reason for the return is received. Estimated allowances for sales returns are based on historical returned quantities as compared to t:slim Pump shipments in the same period. The return rate is then applied to the sales of the period to establish a reserve at the end of the period. The return rates used in the reserve are adjusted for known or expected changes in the marketplace when appropriate. The allowance for product returns at March 31, 2014 and December 31, 2013 was $0.3 million and $0.2 million, respectively. Actual product returns have not differed materially from estimated amounts reserved.

Warranty Reserve

The Company provides a four-year warranty on its t:slim Pump to end user customers and may replace any pumps that do not function in accordance with the product specifications. Any pump returned to the Company may be refurbished and redeployed. Additionally, the Company offers a six month warranty on t:slim cartridges and infusion sets. Estimated warranty costs are recorded at the time of shipment. Warranty costs are estimated based on the current product cost considering a mix of new and refurbished pump costs, actual experience and expected failure rates from test studies performed in conjunction with the clearance of the Company's product with the FDA to support the longevity and reliability of its t:slim Pump. The Company evaluates the reserve quarterly and makes adjustments when appropriate. At March 31, 2014 and December 31, 2013, the warranty reserve was $0.8 million and $1.1 million, respectively. Of the total $0.8 million warranty reserve at March 31, 2014, $0.2 million was recorded as a component of other current liabilities and $0.6 million was recorded in other long-term liabilities. In addition, of the $1.1 million warranty reserve at December 31, 2013, $0.3 million was related to replacement related to the voluntary product recall of selected lots of cartridges. The Company does not expect further replacements beyond March 31, 2014, as such no warranty reserve at March 31, 2014 was related to such potential replacement. Actual warranty costs have not differed materially from estimated amounts reserved.

The following table provides a reconciliation of the change in product warranty liabilities through March 31, 2014:

Balance at December 31, 2013	$ 1,123,000
Provision for warranties issued during the quarter	771,000
Settlements made during the quarter	(1,089,000)
Balance at March 31, 2014	$ 805,000

Stock-Based Compensation

The Company estimates the fair value of stock options and shares issued to employees under the ESPP using a Black-Scholes option-pricing model on the date of grant. The grant date fair value is calculated using the Black-Scholes option-pricing model, which requires the use of subjective assumptions including volatility, expected term, risk-free rate, and the fair value of the underlying common stock. For awards that vest based on service conditions, the Company recognizes expense using the straight-line method less estimated forfeitures. Prior to the

Company's initial public offering, the estimated fair value of these awards was determined at the date of grant based upon the estimated fair value of the Company's common stock. Subsequent to the Company's initial public offering, the fair value of the common stock is based on observable market prices. As of March 31, 2014, there were no outstanding equity awards with market or performance conditions.

The Company records the expense for stock option grants to non-employees based on the estimated fair value of the stock option using the Black-Scholes option-pricing model. The fair value of non-employee awards is re-measured at each reporting period as the underlying awards vest unless the instruments are fully vested, immediately exercisable and nonforfeitable on the date of grant.

Warrant Liabilities

The Company issued freestanding warrants to purchase shares of common stock and convertible preferred stock in connection with the issuance of convertible notes payable in 2011 and 2012. The Company accounted for these warrants as a liability in the financial statements because either the Company did not have enough authorized shares to satisfy potential exercise of the common stock warrants and the number of shares to be issued upon their exercise was outside the control of the Company or because the underlying instrument into which the warrants were exercisable (Series D convertible preferred stock) contained deemed liquidation provisions that were outside of the control of the Company. Upon the closing of the initial public offering, warrants to purchase shares of Series D Preferred Stock automatically converted into warrants to purchase shares of common stock. The Company reclassified the warrant liability to stockholders' equity as the warrants met the definition of an equity instrument.

Prior to the warrants' conversion to an equity instrument, the warrants were recorded at fair value using either the Black-Scholes option pricing model, or a binomial lattice model, depending on the characteristics of the warrants at the time of the valuation. The fair value of these warrants was remeasured at each financial reporting period with any changes in fair value being recognized as a component of other income (expense) in the accompanying statements of operations and comprehensive loss. For the three months ended March 31, 2013, costs of $2.8 million were recorded as other expense from the revaluations. In connection with completion of the initial public offering in November 2013, the Company performed the final remeasurement of the warrant liability.

Net Loss Per Share

Basic net loss per share is calculated by dividing the net loss by the weighted average number of common shares that were outstanding for the period, without consideration for common stock equivalents. Diluted net loss per share is calculated by dividing the net loss by sum of the weighted-average number of dilutive common share equivalents outstanding for the period determined using the treasury-stock method. Dilutive common share equivalents are comprised of convertible preferred stock, preferred stock warrants, common stock warrants, potential Employee Stock Purchase Plan ("ESPP") awards and options outstanding under the Company's equity incentive plans. The calculation of diluted loss per share requires that, to the extent the average fair value of the underlying shares for the reporting period exceeds the exercise price of the warrants and the presumed exercise of such securities are dilutive to loss per share for the period, adjustments to net loss used in the calculation are required to remove the change in fair value of the warrants for the period. Likewise, adjustments to the denominator are required to reflect the related dilutive shares. For all periods presented, there is no difference in the number of shares used to calculate basic and diluted shares outstanding due to the Company's net loss position.

Potentially dilutive securities not included in the calculation of diluted net loss per share attributable to common stockholders (because inclusion would be anti-dilutive) are as follows (in common stock equivalent shares):

	Three Months Ended March 31,	
	2014	2013
Convertible preferred stock outstanding	—	10,647,933
Warrants for common stock	1,297,057	271,834
Common stock options	4,889,549	—
Employee Stock Purchase Plan	137,943	—
Restricted common stock subject to repurchase	—	17,910
	6,324,549	10,937,677

Recent Accounting Pronouncements

In April 2014, the FASB issued an accounting standards update, which includes amendments that change the requirements for reporting discontinued operations and require additional disclosures about discontinued operations. Under the new guidance, only disposals representing a strategic shift in operations—that is, a major effect on the organization's operations and financial results should be presented as discontinued operations. Examples include a disposal of a major geographic area, a major line of business, or a major equity method investment. Additionally, the update requires expanded disclosures about discontinued operations that will provide financial statement users with more information about the assets, liabilities, income, and expenses of discontinued operations. The guidance is effective prospectively for fiscal years beginning after December 15, 2014 and interim periods within annual periods beginning on or after December 15, 2015. The Company does not believe the adoption of this standard will have a material impact on our financial position, results of operations or related financial statement disclosures.

3. Short-Term Investments

The Company invests excess cash in investment securities, principally debt instruments of financial institutions and corporations with strong credit ratings. The following represents a summary of the estimated fair value of short-term investments at March 31, 2014 and December 31, 2013 (in thousands):

At March 31, 2014	Maturity (in years)	Amortized Cost	Unrealized Gain	Unrealized Loss	Estimated Fair Value
Commercial paper	Less than 1	$ 30,424	$ 14	$—	$ 30,438
Government-sponsored enterprises securities	Less than 1	3,510	—	—	3,510
Total		$ 33,934	$ 14	$—	$ 33,948

At December 31, 2013	Maturity (in years)	Amortized cost	Unrealized Gain	Unrealized Loss	Estimated Fair Value
Commercial paper	Less than 1	$ 5,095	$—	$—	$ 5,095
Total		$ 5,095	$—	$—	$ 5,095

4. Inventory

Inventories, stated at the lower of cost or market, consisted of the following (in thousands):

	March 31, 2014	December 31, 2013
Raw materials	$ 6,200	$ 6,363
Work in process	1,978	2,169
Finished goods	2,783	3,535
	10,961	12,067
Less reserve for excess and obsolete	(796)	(1,737)
Total	$ 10,165	$ 10,330

The reserve for excess and obsolete inventory at March 31, 2014 and December 31, 2013 included $0 and $0.9 million associated with the Company's voluntary product recall, respectively.

5. Fair Value Measurements

Authoritative guidance on fair value measurements defines fair value, establishes a consistent framework for measuring fair value, and expands disclosures for each major asset and liability category measured at fair value on either a recurring or nonrecurring basis. Fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. As a basis for considering such assumptions, the authoritative guidance establishes a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value as follows:

Level 1: Observable inputs such as quoted prices in active markets.

Level 2: Inputs, other than the quoted prices in active markets, that are observable either directly or indirectly.

Level 3: Unobservable inputs in which there is little or no market data, which require the reporting entity to develop its own assumptions.

The following table presents information about the Company's financial assets measured at fair value on a recurring basis as of March 31, 2014 and December 31, 2013, and indicates the fair value hierarchy of the valuation techniques utilized by the Company to determine such fair value (in thousands):

	March 31, 2014	Fair Value Measurements at March 31, 2014		
		Level 1	Level 2	Level 3
Assets				
Cash equivalents (1)	$ 71,225	$71,225	$ —	$ —
Restricted cash	2,050	2,050	—	—
Commercial paper	30,438	—	30,438	—
Government-sponsored enterprises securities	3,510	—	3,510	—
Total assets	$107,223	$73,275	$33,948	$ —

(1) Cash equivalents as of March 31, 2014 included money market funds, commercial paper and government-sponsored enterprises securities with a maturity of three months or less from the date of purchase.

	December 31, 2013	Fair Value Measurements at December 31, 2013		
		Level 1	Level 2	Level 3
Assets				
Money market funds	$ 115,112	$115,112	$ —	$ —
Restricted cash	2,050	2,050	—	—
Commercial paper	5,095	—	5,095	—
Total assets	$ 122,257	$117,162	$5,095	$ —

The Company's Level 2 financial instruments are valued using market prices on less active markets and model-derived valuations with observable valuation inputs such as interest rates and yield curves. The Company obtains the fair value of Level 2 financial instruments from quoted market price, calculated price or quotes from third-party pricing services. The Company validates through independent valuation testing and review of portfolio valuations provided by the Company's investment managers. There were no transfers between Level 1 and Level 2 securities during the three months ended March 31, 2014.

6. Loan Agreements

Silicon Valley Bank Loan

In March 2012, the Company entered into a Loan and Security Agreement with Silicon Valley Bank ("SVB"), drawing a bridge loan in the amount of $5.0 million (the "SVB Bridge Loan"). Subsequent to the closing of the Series D financing, the SVB Bridge Loan was converted into a 24-month term loan (the "SVB Term Loan") in September 2012. The term loan accrued interest at an annual rate of 4%, with principal and accrued interest payments due monthly throughout the 24 month term. The SVB Term Loan also required a final payment of $0.3 million and a fee of $0.2 million if the loan was prepaid in its entirety prior to the end of the term of the loan.

In connection with the SVB Bridge Loan and SVB Term Loan, the Company issued in aggregate 102,270 warrants to purchase shares of Series D convertible preferred stock at an exercise price of $4.40 per share. In November 2013, in connection with the closing of the initial public offering, all SVB Series D Preferred Stock warrants automatically converted into warrants to purchase 61,033 shares of our Common Stock at a weighted average exercise price of $7.37 per share.

In conjunction with the Capital Royalty Term Loan closing in January 2013, all principal, interest due and pre-payment fee amounts due under the SVB Term Loan were paid by the Company.

Silicon Valley Bank Revolving Line of Credit

In January 2013, the Company entered into an amended loan agreement with Silicon Valley Bank, making available a revolving line of credit in the amount up to the lesser of $1.5 million or 75% of eligible accounts receivable. Interest-only payments at a rate of 6% per annum are payable monthly through the maturity date 24 months from the initial borrowing. Loans drawn under the agreement are secured by eligible accounts receivable and proceeds therefrom. Additionally, the terms of the revolving line of credit contain various affirmative and negative covenants. There were no amounts outstanding under this loan as of March 31, 2014 and December 31, 2013.

Capital Royalty Term Loan

In December 2012, the Company executed a Term Loan Agreement (the "Original Term Loan Agreement") with Capital Royalty Partners II L.P. ("Capital Royalty Partners") and Capital Royalty Partners II—Parallel Fund "A" L.P. ("CRPPF", together with Capital Royalty Partners, the "Lenders"), providing the Company access to up to $45.0 million under the arrangement, of which $30.0 million was available in January 2013. An additional amount up to $15.0 million became available upon achievement of a 2013 revenue-based milestone. In January 2013, $30 million was drawn under the Original Term Loan Agreement. The loan under the Original Term Loan Agreement accrued interest at an annual rate of 14%. Interest-only payments were due quarterly at March 31, June 30, September 30 and December 31 of each year through December 31, 2015. Thereafter, in addition to interest accrued during the period, quarterly payments were required to include an amount equal to the outstanding principal at December 31, 2015 divided by the remaining number of quarters prior to the maturity of the loan which is December 31, 2017. The Original Term Loan Agreement provided for prepayment fees of 5% of the outstanding balance of the loan if the loan was not repaid prior to April 1, 2014. The prepayment fee was reduced 1% per year for each subsequent year until maturity.

In connection with the Original Term Loan Agreement, in January 2013, the Company issued warrants to purchase 271,834 shares of the Company's Common Stock at an exercise price of $0.02 per share. The warrants were immediately exercisable and expire in January 2023. Because the exercise price of these warrants is nominal,

the Company used the fair value of the common stock of $1.61 at December 31, 2012 to value these warrants. The Company also paid $0.4 million financing fee to the Lenders. The warrants' fair value of approximately $0.4 million and financing fee of $0.4 million were recorded as a debt discount. Additionally, the Company paid $0.7 million to a third party for sourcing the Capital Royalty Term Loan, which was recorded as debt issuance cost. All fees and warrants value are amortized to interest expense over the remaining term using effective interest method.

In April 2014, the Company entered into an Amended and Restated Term Loan Agreement (the "Amended and Restated Term Loan Agreement") with the Lenders and other parties affiliated with Capital Royalty Partners. The Amended and Restated Term Loan Agreement amends and restates the Original Term Loan Agreement. Concurrently, the Company also entered into a new Term Loan Agreement (the "New Tranche Term Loan Agreement") with the Lenders and other parties affiliated with Capital Royalty Partners, under which the Company may borrow up to an additional $30.0 million on or before March 31, 2015 (see Note 10 "Subsequent Events").

7. Stockholders' Equity

Shares Reserved for Future Issuance

The following shares of common stock are reserved for future issuance at March 31, 2014:

Common stock warrants outstanding	1,297,057
Stock options issued and outstanding	4,994,340
Authorized for future option grants	2,257,982
Employee Stock Purchase Plan	785,256
	9,334,635

The Company issued 52,605 shares of common stock upon the exercise of stock options and warrants during the three months ended March, 31, 2014, and issued 95,007 shares of common stock upon the exercise of stock options and warrants during the year ended December 31, 2013.

In October 2013, the Company adopted the 2013 ESPP. As of March 31, 2014, no shares of common stock have been purchased under the ESPP.

Stock-Based Compensation

The assumptions used in the Black-Scholes option-pricing model are as follows:

	Stock Option	
	Three Months Ended March 31,	
	2014	2013
Risk-free interest rate	1.9%	2.4%
Expected dividend yield	0.0%	0.0%
Expected volatility	78.7%	71.8%
Expected term (in years)	6.1	6.0

The following table summarizes the allocation of stock compensation expense (in thousands):

	Three Months Ended March 31,	
	2014	2013
Cost of sales	$ 364	$ 17
Selling, general & administrative	3,003	24
Research and development	404	15
Total	$ 3,771	$ 56

The total stock-based compensation capitalized as part of the cost of inventory was $0.2 million and 0.3 million at March 31, 2014 and December 31, 2013, respectively.

8. Collaborations

DexCom Development and Commercialization Agreement

In February 2012, the Company entered into a Development and Commercialization Agreement with DexCom, Inc. ("DexCom Agreement") for the purpose of collaborating on the development and commercialization of an integrated system which incorporates the t:slim insulin delivery system with DexCom's proprietary continuous glucose monitoring system. Under the DexCom Agreement, the Company paid DexCom $1.0 million at the commencement of the collaboration which was recorded as research and development cost in 2012 and will make two additional $1.0 million payments upon the achievement of certain milestones. Additionally, the Company will reimburse DexCom up to $1.0 million of its development costs and is solely responsible for its own development costs. The amount accrued for DexCom's development costs associated with the DexCom Agreement was not material at March 31, 2014 and December 31, 2013.

Upon commercialization and as compensation for the non-exclusive license rights, the Company will also pay DexCom a royalty calculated at $100 per integrated system sold.

JDRF Collaboration

In January 2013, the Company entered into a research, development and commercialization agreement ("JDRF Agreement") with Juvenile Diabetes Research Foundation ("JDRF") to develop the t:dual Infusion System, a first-of-its-kind, dual-chamber infusion pump for the management of diabetes. According to the terms of the JDRF Agreement, JDRF will provide research funding of up to $3.0 million based on the achievement of research and development milestones, not to exceed research costs incurred by the Company. The research and development milestones are anticipated to be reached by September 2015. Payments the Company receives to fund the collaboration efforts under the terms of the JDRF Agreement will be recorded as restricted cash and current and long term liabilities, and recognized as an offset of research and development expenses straight-line over the remaining months until anticipated completion of the final milestone, only to the extent that the restricted cash is utilized to fund such development activities. As of March 31, 2014, milestone payment achievements totaled $0.7 million, and research and development costs were offset by $0.3 million. The research and development costs were offset by $0.1 million and an immaterial amount for the three months ended March 31, 2014 and 2013, respectively. As of March 31, 2014, the Company received $0.7 million from JDRF and had $0 classified as restricted cash at March 31, 2014 and December 31, 2013.

9. Commitments and Contingencies

From time to time, the Company may be subject to legal proceedings or regulatory encounters or other matters arising in the ordinary course of business, including actions with respect to intellectual property, employment, product liability, and contractual matters. In connection with these matters, the Company assesses, on a regular basis, the probability and range of possible loss based on the developments in these matters. A liability is recorded in the financial statements if it is believed to be probable that a loss has been incurred and the amount of the loss can be reasonably estimated. Because of the uncertainties related to the occurrence, amount, and range of loss on any pending actions, the Company is currently unable to predict their ultimate outcome, and, with respect to any pending litigation or claim where no liability has been accrued, to make a meaningful estimate of the reasonably possible loss or range of loss that could result from an unfavorable outcome. At March 31, 2014 and December 31, 2013, there were no matters for which the negative outcome was considered probable or estimable, and, as a result, no amounts have been accrued at either date.

10. Subsequent Events

On April 4, 2014, the Company entered into the Amended and Restated Term Loan Agreement with Capital Royalty Partners, CRPPF and Capital Royalty Partners II (Cayman) L.P. ("CRPC") under which the Company may borrow up to $30.0 million. The Amended and Restated Term Loan Agreement amends and restates the Original Term Loan Agreement.

Aggregate borrowings outstanding under the Amended and Restated Term Loan Agreement are $30.0 million. Borrowings under the Amended and Restated Term Loan Agreement were used to refinance amounts outstanding under the Original Term Loan Agreement.

The Amended and Restated Term Loan Agreement primarily amends the terms of the Original Term Loan Agreement to reduce the borrowing limit to $30.0 million, to reduce the applicable interest rate from 14.0% to 11.5%, and to extend the interest only payment period from December 31, 2015 to March 31, 2018. Interest is payable, at the Company's option, (i) in cash at a rate of 11.5% per annum or (ii) 9.5% of the 11.5% per annum in cash and 2.0% of the 11.5% per annum is added to the principal of the loan and is subject to accruing interest. Interest-only payments are due quarterly on March 31, June 30, September 30 and December 31 of each year of the interest-only payment period. Thereafter, in addition to interest accrued during the period, the quarterly payments shall include an amount equal to the outstanding principal at March 31, 2018 divided by the remaining number of quarters prior to the end of the term of the loan which is March 31, 2020. The Amended and Restated Term Loan Agreement provides for prepayment fees of 3% of the outstanding balance of the loan if the loan is repaid prior to March 31, 2015. The prepayment fee is reduced by 1% per year for each subsequent year until maturity.

Certain affirmative and negative covenants were also amended to provide the Company with additional flexibility. The principal financial covenants require that the Company attain minimum annual revenues of $30.0 million in 2014, $50.0 million in 2015, $65.0 million in 2016, $80.0 million in 2017 and $95.0 million thereafter.

On the same date, the Company entered into a new Term Loan Agreement (the "New Tranche Term Loan Agreement") with Capital Royalty Partners, CRPPF, CRPC and Parallel Investment Opportunities Partners II L.P. under which the Company may borrow up to an additional $30.0 million on or before March 31, 2015, at the same interest rate and on the same key terms as the Amended and Restated Term Loan Agreement.

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our unaudited condensed financial statements and related notes included in this quarterly report on Form 10-Q and the audited financial statements and notes thereto as of and for the year ended December 31, 2013 included with our Annual Report on Form 10-K for the year ended December 31, 2013 filed with the Securities and Exchange Commission, or SEC. Operating results are not necessarily indicative of results that may occur in future periods.

Certain statements contained in this quarterly report on Form 10-Q, including statements regarding the development, growth and expansion of our business, our intent, belief or current expectations, primarily with respect to our future operating performance, and the products we expect to offer and other statements regarding matters that are not historical facts, are "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, or Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or Exchange Act, and are subject to the "safe harbor" created by these sections. Future filings with the SEC, future press releases and future oral or written statements made by us or with our approval, which are not statements of historical fact, may also contain forward-looking statements. Because such statements include risks and uncertainties, many of which are beyond our control, actual results may differ materially from those expressed or implied by such forward-looking statements. Some of the factors that could cause actual results to differ materially from those expressed or implied by such forward-looking statements can be found under the caption "Risk Factors," and elsewhere in this quarterly report on Form 10-Q as well as in our other filings with the SEC. Readers are cautioned not to place undue reliance on forward-looking statements. The forward-looking statements speak only as of the date on which they are made, and we undertake no obligation to update such statements to reflect events that occur or circumstances that exist after the date on which they are made.

Overview

We are a medical device company with an innovative approach to the design, development and commercialization of products for people with insulin-dependent diabetes. We designed and commercialized our flagship product, the t:slim Insulin Delivery System, or t:slim, based on our proprietary technology platform and unique consumer-focused approach. Our technology platform features our patented Micro-Delivery Technology, a miniaturized pumping mechanism which draws insulin from a flexible bag within the pump's cartridge rather than relying on a syringe and plunger mechanism. It also features an easy-to-navigate embedded software architecture, a vivid color touchscreen and a micro-USB connection that supports both a rechargeable battery and t:connect, our data management application. Our innovative approach to product design and development is also consumer-focused and based on our extensive market research as we believe the user is the primary decision maker when purchasing an insulin pump. We also apply the science of human factors to our design and development process, which seeks to optimize our devices to the intended users, allowing users to successfully operate our devices in their intended environment. Leveraging our technology platform and consumer-focused approach, we develop products to address unmet needs of people in all segments of the large and growing insulin-dependent diabetes market.

The FDA cleared t:slim in November 2011. We commenced commercial sales of t:slim in the United States in the third quarter of 2012. We consider the number of units shipped per quarter to be an important metric for managing our business. Since the launch of t:slim, we have shipped total approximately 9,250 pumps as of March 31, 2014 broken down by quarter as follows:

	Units Shipped for Each of the Three Months Ended in Respective Years		
	2012	2013	2014
March 31	N/A	852	1,723
June 30	9	1,363	N/A
September 30	204	1,851	N/A
December 31	844	2,406	N/A
Total	1,057	6,472	1,723

For the three months ended March 31, 2014 and 2013, our sales were $8.1 million and $5.5 million, respectively. For the three months ended March 31, 2014 and 2013, our net loss was $22.0 million and $11.2 million, respectively. Our accumulated deficit as of March 31, 2014 was $191.2 million.

We have derived nearly all of our revenue from the sale of t:slim in the United States and expect to continue to do so until we are able to commercialize our other products that are currently under development. A substantial portion of the purchase price of an insulin pump is typically paid for by third-party payors, including private insurance companies, preferred provider organizations and other managed care providers. Future sales of our current and future products will be limited unless our customers can rely on third-party payors to pay for all or part of the associated purchase cost. Access to adequate coverage and reimbursement for our current and future products by third-party payors is essential to the acceptance of our products by customers. In circumstances that we do not have contracts established with third-party payors, to the extent possible we utilize our network of national and regional distributors to service our customers.

We believe we can achieve profitability because our proprietary technology platform will allow us to maximize efficiencies in the development, production and sales of our products. By leveraging our core technology, we believe we can develop and bring to market products rapidly and greatly reduce our design and development costs. We expect to continue to increase production volume, and to reduce the per unit production cost for the t:slim Pump and its disposable cartridge over time. Further, due to shared product design features, our production system is adaptable to new products and we intend to leverage our shared manufacturing infrastructure to reduce our product costs and drive operational efficiencies. By expanding our product offerings to address people in all segments of the large and growing insulin-dependent diabetes market, we believe we can increase the productivity of our sales force, thereby improving our operating margin.

From inception through March 31, 2014, we have primarily financed our operations through sales of equity securities, and, to a lesser extent, debt financings. We expect to continue to incur net losses for the next several years and may require additional capital through equity financings and debt financings in order to fund our operations to a level of revenues adequate to support our cost structure.

We have experienced considerable revenue growth since the commercial launch of t:slim in the third quarter of 2012, while incurring operating losses since our inception. Our operating results may fluctuate on a quarterly or annual basis in the future and our growth or operating results may not be consistent with predictions made by securities analysts. We may not be able to achieve profitability in the future. For additional information about the risks and uncertainties associated with our business, see the section entitled "Risk Factors" in Part II, Item 1A of this quarterly report.

Voluntary Recall

On January 10, 2014, we announced a voluntary recall of select lots of cartridges used with the t:slim that may be at risk of leaking. The cause of the recall was identified during our internal product testing. The recall was expanded on January 20, 2014 to include additional lots of affected cartridges used with the t:slim. We incurred approximately $1.7 million in direct costs associated with the recall. We recorded a cost of sales charge of approximately $1.3 million in the fourth quarter of 2013 and recorded the cost of sales charge for the remainder in the first quarter of 2014 for affected cartridges shipped in the first quarter of 2014. We do not currently expect any further direct financial impact of the recall beyond these costs. The total cost of the recall consisted of approximately $0.7 million associated with the return and replacement of affected cartridges in the field and approximately $1.0 million for the write-off of affected cartridges within our internal inventory.

Subsequent Event—Capital Royalty Partners Term Loans

In December 2012, we executed a Term Loan agreement (the "Original Term Loan Agreement") with Capital Royalty Partners II L.P. ("Capital Royalty Partners") and Capital Royalty Partners II—Parallel Fund "A" L.P. ("CRPPF", together with Capital Royalty Partners, the "Lenders"), providing us access to $45.0 million under the arrangement, of which $30.0 million was available in January 2013, and an additional amount up to $15.0 million was available upon our achievement of a 2013 revenue-based milestone. In January 2013, $30.0 million was drawn under the agreement, a portion of which was used to repay all amounts outstanding under our $5.0 million loan from Silicon Valley Bank.

On April 4, 2014, we entered into the Amended and Restated Term Loan Agreement with Capital Royalty Partners, CRPPF and Capital Royalty Partners II (Cayman) L.P. ("CRPC") under which we may borrow up to $30.0 million. The Amended and Restated Term Loan Agreement amends and restates the Original Term Loan Agreement.

Aggregate borrowings outstanding under the Amended and Restated Term Loan Agreement are $30.0 million. Borrowings under the Amended and Restated Term Loan Agreement were used to refinance amounts outstanding under the Original Term Loan Agreement.

The Amended and Restated Term Loan Agreement primarily amends the terms of the Original Term Loan Agreement to reduce the borrowing limit to $30.0 million, to reduce the applicable interest rate from 14.0% to 11.5%, and to extend the interest only payment period from December 31, 2015 to March 31, 2018. Interest is payable, at our option, (i) in cash at a rate of 11.5% per annum or (ii) 9.5% of the 11.5% per annum in cash and 2.0% of the 11.5% per annum is added to the principal of the loan and is subject to accruing interest. Interest-only payments are due quarterly on March 31, June 30, September 30 and December 31 of each year of the interest-only payment period. Thereafter, in addition to interest accrued during the period, the quarterly payments shall include an amount equal to the outstanding principal at March 31, 2018 divided by the remaining number of quarters prior to the end of the term of the loan. The Amended and Restated Term Loan Agreement provides for prepayment fees of 3% of the outstanding balance of the loan if the loan is repaid prior to March 31, 2015. The prepayment fee is reduced by 1% per year for each subsequent year until maturity.

Certain affirmative and negative covenants were also amended to provide us with additional flexibility. The principal financial covenants require that we attain minimum annual revenues of $30.0 million in 2014, $50.0 million in 2015, $65.0 million in 2016, $80.0 million in 2017 and $95.0 million thereafter.

On the same date, we entered into a new Term Loan Agreement (the "New Tranche Term Loan Agreement") with Capital Royalty Partners, CRPPF, CRPC and Parallel Investment Opportunities Partners II L.P. under which we may borrow up to an additional $30.0 million on or before March 31, 2015, at the same interest rate and on the same key terms as the Amended and Restated Term Loan Agreement.

Components of Results of Operations

Sales

We commenced commercial sales of t:slim in the United States in the third quarter of 2012. The t:slim Insulin Delivery System is comprised of the t:slim Pump and pump-related supplies that include disposable cartridges and infusion sets. We also offer accessories including protective cases, belt clips, and power adapters. Sales of accessories since commercial launch have not been material. We primarily sell our products through national and regional distributors on a non-exclusive basis. These distributors are generally providers of medical equipment and supplies to individuals with diabetes. Our primary end customers are people with insulin-dependent diabetes. Similar to other durable medical equipment, the primary payor is generally a third-party insurance carrier and the customer is usually responsible for any medical insurance plan copay or co-insurance requirements.

We anticipate our sales will increase as we expand our sales and marketing infrastructure, increase awareness of our products and broaden third party reimbursement for our products. We also expect that our sales will fluctuate on a quarterly basis in the future due to a variety of factors, including seasonality and the impact of the buying patterns of our distributors and other customers. We believe that our sales are subject to seasonal fluctuation due to the impact of annual deductible and coinsurance requirements associated with most medical insurance plans utilized by our individual customers and the individual customers of our distributors. Our sales may also be influenced by the summer vacation period. Accordingly, we have experienced and expect to continue experience sequential growth of sales from the third quarter to the fourth quarter to be relatively higher than for other quarter-to-quarter growth, and we also expect sequential sales from the fourth quarter to the first quarter to be relatively flat or down.

Cost of Sales

We manufacture the t:slim Pump and its disposable cartridge at our manufacturing facility in San Diego, California. Infusion sets and t:slim accessories are manufactured by third-party suppliers. Cost of sales includes raw materials, labor costs, manufacturing overhead expenses, product training cost and reserves for expected warranty costs, scrap and inventory obsolescence. Due to our relatively low production volumes, compared to our potential capacity to produce our products, the majority of our per unit costs are currently manufacturing overhead expenses. These expenses include quality assurance, manufacturing engineering, material procurement, inventory control, facilities, equipment, information technology and operations supervision and management.

We expect our overall gross margin, which is calculated as sales less cost of sales for a given period divided by sales, to fluctuate in future periods as a result of the changing percentage of products sold to distributors versus directly to individual customers, varying levels of reimbursement among third-party payors, changing mix of products sold with different gross margins, changes in our manufacturing processes, costs or manufacturing output. Manufacturing inefficiencies will also impact our gross margins, which we may experience as we attempt to manufacture our products on a larger scale, change our manufacturing capacity or output, and adjust to expanding our manufacturing facilities. Any new products that we sell in the future may change our future gross margins.

Selling, General and Administrative

We expect our selling, general and administrative, or SG&A, expenses to increase as our business expands. Our SG&A expenses primarily consist of salary, fringe benefits and stock-based compensation for our executive, financial, marketing, sales, business development, regulatory affairs and administrative functions. Other significant expenses include product demonstration samples, trade show expenses, outside legal counsel, independent auditors and other outside consultants, insurance, facilities and information technology expenses.

Research and Development

We expect our research and development, or R&D, expenses to increase as we initiate and advance our development projects. Our R&D activities primarily consist of engineering and research programs associated with our products under development, as well as R&D activities associated with our core technologies and processes. R&D expenses are primarily related to employee compensation, including salary, fringe benefits, stock-based compensation and temporary employee expenses. We also incur significant expenses for supplies, development prototypes, outside design and testing services and milestone payments under our development and commercialization agreements with DexCom and other collaborators.

Other Income and Expense

Our other income and expense primarily consists of interest expense and amortization of debt discount and debt issuance costs associated with term loan agreements. At March 31, 2014, there was $30.0 million outstanding principal under our Original Term Loan Agreement with the Lenders, which accrues interest at a rate of 14% per annum. In previous years, other income and expense also included interest expense and amortization of debt discount associated with convertible notes payable and the change in the fair value of outstanding common and preferred stock warrants for which the final revaluation was performed in connection with our initial public offering in the fourth quarter of 2013.

In connection with the Amended and Restated Term Loan Agreement entered into during April 2014, the interest rate was reduced from 14% to 11.5% per annum with the principal amount unchanged.

Results of Operations

(in thousands, except percentages)	Three Months Ended March 31, 2014	2013
Sales	$ 8,065	$ 5,458
Cost of sales	7,198	3,418
Gross profit	867	2,040
Gross margin	11%	37%
Operating expenses:		
Selling, general and administrative	18,041	6,884
Research and development	3,663	2,322
Total operating expenses	21,704	9,206
Operating loss	(20,837)	(7,166)
Other income (expense), net:		
Interest and other income	18	—
Interest and other expense	(1,143)	(1,167)
Change in fair value of stock warrants	—	(2,830)
Total other income (expense), net	(1,125)	(3,997)
Net loss	$ (21,962)	$ (11,163)

Comparison of Three Months Ended March 31, 2014 and 2013

Sales. We began selling our products in the third quarter of 2012. Sales for the three months ended March 31, 2014 and 2013 were $8.1 million and $5.5 million, respectively. Sales for the three months ended March 31, 2013 included a one-time adjustment for recognition of $1.9 million of t:slim Pump sales that was previously deferred in the fourth quarter of 2012 due to our lack of history for estimating product returns at that time. For the three months ended March 31, 2014 and 2013, sales from the t:slim Pump accounted for 86% and 95% of sales, respectively, while pump-related supplies primarily accounted for the remainder of our sales in each period. Sales of accessories were not material in either period. Sales to distributors accounted for 68% and 73% of our total sales for the three months ended March 31, 2014 and 2013, respectively. The increase in t:slim Pump sales during the three months ended March 31, 2014 compared to the same period in 2013 was primarily attributable to the increase in the size of our sales force during the relevant periods.

The commercialization of the t:slim Pump and pump related supplies and accessories initially involved a sales force of limited size. During the first quarter of 2013, we operated with 11 sales territories. Throughout 2013, we expanded from 11 sales territories to 36 sales territories. During the first quarter of 2014, we further expanded the sales force from 36 at the end of 2013 to 60 at the end of the first quarter of 2014. During the expansion of the sales force in both 2013 and 2014, we believe our sales force experienced some initial disruption in their individual productivity as territories were realigned and responsibilities adjusted.

Cost of Sales and Gross Profit. Our cost of sales for the three months ended March 31, 2014 was $7.2 million, resulting in gross profit of $0.9 million and a gross margin of 11%, compared to cost of sales of $3.4 million in the same period in 2013 resulting in gross profit of $2.0 million and a gross margin of 37%.

The decrease in our gross margin for the three months ended March 31, 2014 from the comparable period of 2013 resulted primarily from the difference in per unit manufacturing overhead costs we experienced in each of the periods. Since the first quarter of 2013, we significantly increased our manufacturing operations and costs as we address increasing production volume requirements. Overhead costs increased more than 50% during the three month period ended March 31, 2014, as compared to the same period in 2013. Our manufacturing overhead costs have and will continue to be a significant component of the cost of our products, and as a result have, and may continue to impact, our gross margins as we attempt to manufacture our products on a larger scale, change our manufacturing processes, capacity or output, implement additional automated manufacturing equipment and adjust to expanding our manufacturing facilities.

Included in cost of sales for the three months ended March 31, 2014 were costs of $0.3 million associated with our voluntary product recall of selected lots of cartridges initiated in January 2014, resulting in a reduction of the gross margin for that period of four percentage points. Included in cost of sales for the three months ended March 31, 2013 were costs of $1.1 million that were previously deferred at the end of the fourth quarter of 2012 due to our lack of history for estimating product returns at that time. These costs, along with the previously deferred sales of $1.9 million recognized in the first quarter of 2013, resulted in a two percentage point increase in gross margin of the first quarter of 2013.

Also contributing to the decrease in the gross margin in the first quarter of 2014 as compared to the first quarter of 2013 were the varying levels of reimbursement among a changing mix of third-party payors and the increase in sales of pump-related supplies. Our gross margin on the sales of t:slim Pump was higher than pump-related supplies for the quarters ended March 31, 2014 and 2013, and is expected to remain higher in the future. These and other factors, such as the percentage of products sold to distributors versus directly to individual customers and any new products that we sell in the future, may continue to impact our future gross margins.

Selling, General and Administrative Expenses. SG&A expenses increased 162% to $18.0 million for the three months ended March 31, 2014 from $6.9 million in the same period in 2013. The increase in SG&A expenses was primarily associated with the continued expansion of our commercial operations. At March 31, 2014, our headcount for sales, general and administrative functions more than doubled compared to March 31, 2013. This includes an expansion to 60 sales territories by the end of the first quarter of 2014 from 36 at the end of 2013 and 11 at the end of the first quarter of 2013. A territory is maintained by sales representatives, field clinical specialists, managed care liaisons, additional sales management and other customer support personnel, as well as the growth of the administrative infrastructure to support the growing operations. Employee-related expenses for our sales, general and administrative functions comprise the majority of the SG&A expenses. Such employee-related expenses increased $8.4 million during the first three months of 2014 compared to the same period in 2013, including an increase of $2.9 million in stock-based compensation associated with equity awards. SG&A expenses also increased $2.8 million during the first three months of 2014 compared to the same period in 2013 associated with marketing and promotional activities, tradeshows, travel expenses and technological support.

Research and Development Expenses. R&D expenses increased 58% to $3.7 million for the three months ended March 31, 2014 from $2.3 million for the same period in 2013. The increase in R&D expenses consisted primarily of an increase of $1.3 million in employee-related expenses.

Other Income (Expense). Other expense for the three months ended March 31, 2014 was $1.1 million, compared to $4.0 million for the same period in 2013. Other expense for the first three months of 2014 was primarily comprised of $1.1 million interest expense associated with the Original Term Loan Agreement executed in December 2012. $30.0 million was drawn under the Original Term Loan Agreement in January 2013.

In comparison, other expense for the three months ended March 31, 2013 was primarily comprised of a $2.8 million decrease in the fair value of the common and preferred stock warrants and $1.2 million interest expense associated with the Original Term Loan Agreement.

Liquidity and Capital Resources

At March 31, 2014, we had $110.8 million in cash and cash equivalents and short-term investments. We believe that our cash on hand, cash available under our term loan agreement and proceeds from the equity activities will be sufficient to satisfy our liquidity requirements for at least the next 18 months. We expect that our sales performance and the resulting operating income or loss, as well as the status of each of our new product development programs, will significantly impact our cash management decisions. We have utilized, and may continue to utilize, debt arrangements with debt providers and financial institutions to finance our operations. Factors such as interest rates and available cash will impact our decision to continue to utilize debt arrangements as a source of cash.

Historically, our sources of cash have included private placements and a public offering of equity securities, debt arrangements, and cash generated from operations. Our historical cash outflows have primarily been associated with cash used for operating activities such as the purchase of inventory, expansion of our sales and marketing infrastructure, increase in our R&D activities and other working capital needs, as well as cash used for investing activities, such as the acquisition of intellectual property, expenditures related to equipment and improvements used to increase our manufacturing capacity and improve our manufacturing efficiency and overall facility expansion.

The following table shows a summary of our cash flows for the three months ended March 31, 2014 and 2013:

(in thousands)	Three Months Ended March 31, 2014	2013
Net cash provided by (used in):		
Operating activities	$ (16,960)	$ (8,811)
Investing activities	(30,626)	(1,401)
Financing activities	27	22,487
Total	$ (47,559)	$ 12,275

Operating activities. Net cash used in operating activities was $17.0 million for the three months ended March 31, 2014, compared to $8.8 million for the same period in 2013. The increase in net cash used in operating activities for the three months ended March 31, 2014 and 2013 periods presented was primarily associated with increased costs related to the continued expansion of commercial operations during the first quarter of 2014. Our employee headcount, employee-related expenses and working capital needs, including accounts receivable and inventory, increased significantly as a result of our expansion of commercial operations.

Investing activities. Net cash used in investing activities was $30.6 million for the three months ended March 31, 2014, compared to $1.4 million in the same period in 2013. This increase was primarily related to the purchase of short-term investments and capital equipment.

Financing activities. Net cash provided by financing activities was not material for the three months ended March 31, 2014, compared to $22.5 million for the same period in 2013. Net cash provided in the first quarter of 2013 was primarily related to net proceeds from issuance of notes payable of $28.9 million, offset by principal payments on notes payable of $4.4 million and $2.0 million used in restricted cash. These financing activities were not reoccurring in the first quarter of 2014.

Our liquidity position and capital requirements are subject to fluctuation based on a number of factors. For example, our cash inflow and outflow may be impacted by the following:

- fluctuations in gross margins and operating margins;
- our ability to generate sales; and
- fluctuations in working capital.

Our primary short-term capital needs, which are subject to change, include expenditures related to:

- support of our commercialization efforts related to our current and future products;
- improvements in our manufacturing capacity and efficiency;
- growth of our sales, marketing and clinical infrastructure;
- new research and product development efforts;
- payment of quarterly interest due under our term debt agreement;
- the acquisition of equipment and other fixed assets;
- facilities expansion needs; and
- potential up-front, milestone payments or reimbursement of costs under R&D collaborations and licensing agreements.

Although we believe the foregoing items reflect our most likely uses of cash in the short-term, we cannot predict with certainty all of our particular short-term cash uses or the timing or amount of cash used. If cash generated from operations is insufficient to satisfy our working capital and capital expenditure requirements, we may be required to sell additional equity or debt securities or obtain additional credit facilities. Additional capital, if needed, may not be available on satisfactory terms, if at all. Furthermore, any additional equity financing may be dilutive to stockholders, and debt financing, if available, may include restrictive covenants.

Indebtedness

Capital Royalty Partners Term Loans

In December 2012, we executed a Term Loan agreement (the "Original Term Loan Agreement") with Capital Royalty Partners II L.P. ("Capital Royalty Partners") and Capital Royalty Partners II—Parallel Fund "A" L.P. ("CRPPF", together with Capital Royalty Partners, the "Lenders"), providing us access to $45.0 million under the arrangement, of which $30.0 million was available in January 2013, and an additional amount up to $15.0 million became available upon our achievement of a 2013 revenue-based milestone. In January 2013, $30.0 million was drawn under the agreement, a portion of which was used to repay all amounts outstanding under our $5.0 million loan from Silicon Valley Bank.

On April 4, 2014, we entered into the Amended and Restated Term Loan Agreement with the Lenders and Capital Royalty Partners II (Cayman) L.P. ("CRPC") under which we may borrow up to $30.0 million. The Amended and Restated Term Loan Agreement amends and restates the Original Term Loan Agreement.

Aggregate borrowings outstanding under the Amended and Restated Term Loan Agreement are $30.0 million. Borrowings under the Amended and Restated Term Loan Agreement were used to refinance amounts outstanding under the Original Term Loan Agreement.

The Amended and Restated Term Loan Agreement primarily amends the terms of the Original Term Loan Agreement to reduce the borrowing limit to $30.0 million, to reduce the applicable interest rate from 14.0% to 11.5%, and to extend the interest only payment period from December 31, 2015 to March 31, 2018. Interest is payable, at our option, (i) in cash at a rate of 11.5% per annum or (ii) 9.5% of the 11.5% per annum in cash and 2.0% of the 11.5% per annum is added to the principal of the loan and is subject to accruing interest. Interest-only payments are due quarterly on March 31, June 30,

September 30 and December 31 of each year of the interest-only payment period. Thereafter, in addition to interest accrued during the period, the quarterly payments shall include an amount equal to the outstanding principal at March 31, 2018 divided by the remaining number of quarters prior to the end of the term of the loan. The Amended and Restated Term Loan Agreement provides for prepayment fees of 3% of the outstanding balance of the loan if the loan is repaid prior to March 31, 2015. The prepayment fee is reduced by 1% per year for each subsequent year until maturity.

Certain affirmative and negative covenants were also amended to provide us with additional flexibility. The principal financial covenants require that we attain minimum annual revenues of $30.0 million in 2014, $50.0 million in 2015, $65.0 million in 2016, $80.0 million in 2017 and $95.0 million thereafter.

On the same date, we entered into the New Tranche Term Loan Agreement with the Lenders, CRPC and Parallel Investment Opportunities Partners II L.P. under which we may borrow up to an additional $30.0 million on or before March 31, 2015, at the same interest rate and on the same key terms as the Amended and Restated Term Loan Agreement.

Silicon Valley Bank Revolving Line of Credit

In January 2013, we entered into an amended loan agreement with Silicon Valley Bank, making available a two year revolving line of credit in the amount up to the lesser of $1.5 million or 75% of eligible accounts receivable. Interest-only payments at a rate of 6% per annum are payable monthly through the maturity date 24 months from the initial borrowing. Loans drawn under the agreement are secured by our eligible accounts receivable and proceeds therefrom. Additionally, the terms of the revolving line of credit contain various affirmative and negative covenants. There were no amounts outstanding under this line of credit as of March 31, 2014 and December 31, 2013. In the event of our breach of the agreement, we may not be allowed to draw amounts under the agreement, and, to the extent we have any amounts outstanding at the time of any breach, we may be required to repay such amounts earlier than anticipated.

Critical Accounting Policies

Our discussion and analysis of our financial condition and results of operations are based on our financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles, or GAAP. The preparation of these financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities and expenses and related disclosure of contingent assets and liabilities. On an ongoing basis, we evaluate these estimates, including those related to revenue recognition, warranty reserve, inventory reserve, capitalized intellectual property, stock-based compensation and warrant liabilities. These estimates are based on historical experience and various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for judgments about the carrying values of assets and liabilities and the recognition of revenues and expenses. Actual results may differ from these estimates under different assumptions or conditions. There have been no material changes to our critical accounting policies and estimates from the information provided in Part II, Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations – Critical Accounting Policies Involving Management Estimates and Assumptions”, included in our Annual Report on Form 10-K for the year ended December 31, 2013.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

We invest our excess cash primarily in commercial paper and government-sponsored enterprises securities. Some of the financial instruments in which we invest have market risk associated with them in that a change in prevailing interest rates may cause the principal amount of the instrument to fluctuate. Other financial instruments in which we invest potentially subject us to credit risk in that the value of the instrument may fluctuate based on the issuer's ability to pay.

The primary objectives of our investment activities are to ensure liquidity and to preserve principal while at the same time maximizing the income we receive from our financial instruments without significantly increasing risk. We have established guidelines regarding approved investments and maturities of investments, which are designed to maintain safety and liquidity.

Because of the short-term maturities of our financial instruments, we do not believe that an increase or decrease in interest rates would have any significant impact on the realized value of our investment portfolio. If a 10% change in interest rates were to have occurred on March 31, 2014, this change would not have had a material effect on the fair value of our investment portfolio as of that date.

The interest rate under our Amended and Restated Term Loan Agreement is fixed and not subject to changes in market interest rates.

We do not have any foreign currency or other derivative financial instruments.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our periodic and current reports that we file with the SEC is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure. 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 and not absolute assurance of achieving the desired control objectives. In reaching a reasonable level of assurance, management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. In addition, the design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance a particular design will succeed in achieving its stated goals under all potential future conditions. Furthermore, over time, control may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

As of March 31, 2014, we carried out an evaluation, under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level as of March 31, 2014.

Changes in Internal Control over Financial Reporting

An evaluation was also performed under the supervision and with the participation of our management, including our principal executive officer and our principal financial and accounting officer, of any change in our internal control over financial reporting that occurred during our last fiscal quarter and that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting. That evaluation did not identify any change in our internal control over financial reporting that occurred during our latest fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

From time to time we may be involved in various disputes and litigation matters that arise in the ordinary course of business. We are currently not a party to any material legal proceedings.

Item 1A. Risk Factors

The following sets forth risk factors associated with our business. The risk factors set forth below with an asterisk (*) next to the title contain changes to the description of the risk factors associated with our business previously disclosed in Item 1A. of our annual report on Form 10-K for the year ended December 31, 2013. Additional risks and uncertainties that we are unaware of may also become important factors that affect us. If any of the following risks occur, our business, financial condition, results of operations or prospects could be materially and adversely affected. In these circumstances, the market price of our common stock could decline and you might lose all or part of your investment.

Risks Relating to Our Business and our Industry

We have incurred significant operating losses since inception and cannot assure you that we will achieve profitability.*

Since our inception in January 2006 we have incurred a significant net loss. As of March 31, 2014, we had an accumulated deficit of $191.2 million. To date, we have financed our operations primarily through sales of equity securities, debt financing with Capital Royalty Partners and certain of its affiliates, and sales of our products. We have devoted substantially all of our resources to the research and development of our products, the commercial launch of our products, the development of a sales and marketing team and the assembly of a management team to manage our business.

We began commercial sales of t:slim in the third quarter of 2012. Beginning in the first quarter of 2013, we have been able to manufacture and sell t:slim at a cost and in volumes sufficient to allow us to achieve a positive gross margin. For the year ended December 31, 2013, our gross profit was $6.2 million. However, although we have achieved a positive gross margin, we still operate at a substantial net loss and expect that we will continue to do so for at least the next several years.

To implement our business strategy we need to, among other things, grow our sales and marketing infrastructure to increase sales of our products, fund ongoing research and development activities, expand our manufacturing capabilities, and obtain regulatory clearance or approval to commercialize our products currently under development. We expect our expenses to increase significantly as we pursue these objectives. The extent of our future operating losses and the timing of profitability are highly uncertain, especially given that we only recently began to commercialize t:slim, which makes forecasting our sales more difficult. Any additional operating losses will have an adverse effect on our stockholders' equity, and we cannot assure you that we will ever be able to achieve or sustain profitability.

We currently rely on sales of t:slim to generate a significant portion of our revenue, and any factors that negatively impact sales of this product may adversely affect our business, financial condition and operating results.

Our primary revenue-generating commercial product is t:slim, which we introduced to the market in the third quarter of 2012. We expect to continue to derive a significant portion of our revenue from the sale of t:slim and pump-related supplies. Accordingly, our ability to generate revenue is highly dependent on our ability to market and sell t:slim.

Sales of t:slim may be negatively impacted by many factors, including:

- problems arising from the expansion of our manufacturing capabilities, or destruction, loss, or temporary shutdown of our manufacturing facility;

- changes in reimbursement rates or policies relating to t:slim or similar products or technologies by third-party payors;
- our inability to enter into contracts with third-party payors on a timely basis and on acceptable terms;
- claims that t:slim, or any component thereof, infringes on patent rights or other intellectual property rights of third-parties;
- the harm to our reputation or any other associated liability or perceived risks that may arise from our January 2014 recall of cartridges used with the t:slim; and
- adverse regulatory or legal actions relating to t:slim or similar products or technologies.

Because we currently rely on a single product to generate a significant portion of our revenue, any factors that negatively impact sales of this product, or result in sales of this product increasing at a lower rate than expected, could adversely affect our business, financial condition and operating results and negatively impact our ability to successfully launch future products currently under development.

The failure of t:slim to achieve and maintain market acceptance could result in us achieving sales below our expectations, which would cause our business, financial condition and operating results to be materially and adversely affected.

Our current business strategy is highly dependent on t:slim achieving and maintaining market acceptance. In order for us to sell t:slim to people with insulin-dependent diabetes, we must convince them, their caregivers and healthcare providers that it is an attractive alternative to competitive products for the treatment of diabetes, including traditional insulin pump products and MDI therapies, as well as alternative insulin treatment methodologies. Market acceptance and adoption of t:slim depends on educating people with diabetes, as well as their caregivers and healthcare providers, as to the distinct features, ease-of-use, positive lifestyle impact, and other perceived benefits of t:slim as compared to competitive products. If we are not successful in convincing existing and potential customers of the benefits of t:slim, or if we are not able to achieve the support of caregivers and healthcare providers for t:slim, our sales may decline or we may fail to increase our sales in line with our forecasts.

Achieving and maintaining market acceptance of t:slim could be negatively impacted by many factors, including:

- the failure of t:slim to achieve wide acceptance among people with insulin-dependent diabetes, their caregivers, insulin-prescribing healthcare providers, third-party payors and key opinion leaders in the diabetes treatment community;
- lack of evidence supporting the safety, ease-of-use or other perceived benefits of t:slim over competitive products or other currently available insulin treatment methodologies;
- perceived risks associated with the use of t:slim or similar products or technologies generally;
- the introduction of competitive products and the rate of acceptance of those products as compared to t:slim; and
- results of clinical studies relating to t:slim or similar competitive products.

In addition, t:slim may be perceived by people with insulin-dependent diabetes, their caregivers or healthcare providers to be more complicated, less reliable or less effective than traditional insulin therapies, including MDI, and people may be unwilling to change their current treatment regimens. These negative perceptions may be heightened following our January 2014 recall of cartridges used with the t:slim. Moreover, we believe that healthcare providers tend to be slow to change their medical treatment practices because of perceived liability risks arising from the use of new products and the uncertainty of third party reimbursement. Accordingly, healthcare providers may not recommend t:slim until there is sufficient evidence to convince them to alter the treatment methods they typically recommend, such as receiving recommendations from prominent healthcare providers or other key opinion leaders in the diabetes treatment community that our products are effective in providing insulin therapy.

If t:slim does not achieve and maintain widespread market acceptance, we may fail to achieve sales at or above our projected amounts. If our sales do not meet projected amounts, we may fail to meet our strategic objectives, and our business, financial condition and operating results could be materially and adversely affected.

Failure to secure or retain adequate coverage or reimbursement for t:slim and our potential future products by third-party payors could adversely affect our business, financial condition and operating results.

We have derived nearly all of our revenue from the sale of t:slim in the United States and expect to continue to do so until we are able to commercialize our other products that are currently under development. A substantial portion of the purchase price of an insulin pump is typically paid for by third-party payors, including private insurance companies, preferred provider organizations and other managed care providers. Future sales of our current and future products will be limited unless our customers can rely on third-party payors to pay for all or part of the associated purchase cost. Access to adequate coverage and reimbursement for our current and future products by third-party payors is essential to the acceptance of our products by customers.

Many third-party payors use coverage decisions and payment amounts determined by the Centers for Medicare and Medicaid Services, or CMS, which administers the U.S. Medicare program, as guidelines in setting their coverage and reimbursement policies. Medicare has recently begun to review its reimbursement practices for diabetes-related products. Medicare implemented a competitive bidding process for blood glucose strip reimbursement, which resulted in a significant reduction in the reimbursement rate for those products. More recently, Medicare has also initiated a competitive bidding process for insulin pumps in limited geographies. As a result, there is uncertainty as to the future Medicare reimbursement rate for our products. In addition, those third-party payors that do not follow the CMS guidelines may adopt different coverage and reimbursement policies for our current and future products. It is possible that some third-party payors will not offer any coverage for our current or future products.

We currently have contracts establishing reimbursement for t:slim with 64 national and regional third-party payors in the United States. While we anticipate entering into additional contracts with third-party payors, we cannot guarantee that we will succeed in doing so or that the reimbursement contracts that we are able to negotiate will enable us to sell our products on a profitable basis. In addition, contracts with third-party payors generally can be modified or terminated by the third-party payor without cause and with little or no notice to us. Moreover, compliance with the administrative procedures or requirements of third-party payors may result in delays in processing approvals by those third-party payors for customers to obtain coverage for t:slim. Failure to secure or retain adequate coverage or reimbursement for t:slim and our future products by third-party payors, or delays in processing approvals by those payors, could result in the loss of sales, which could have a material adverse effect on our business, financial condition and operating results.

Furthermore, the healthcare industry in the United States is increasingly focused on cost containment as government and private insurers seek to control healthcare costs by imposing lower payment rates and negotiating reduced contract rates with third-party payors. If third-party payors deny coverage or reduce their current levels of payment, or if our production costs increase faster than increases in reimbursement levels, we may be unable to sell t:slim on a profitable basis.

We operate in a very competitive industry and if we fail to compete successfully against our existing or potential competitors, many of whom have greater resources than we have, our sales and operating results may be negatively affected.

The medical device industry is intensely competitive, subject to rapid change and highly sensitive to the introduction of new products or technologies, or other activities of industry participants. t:slim competes directly with a number of traditional insulin pumps as well as other methods for the treatment of diabetes. Many of our existing and potential competitors are major medical device companies that are either publicly traded companies or divisions or subsidiaries of publicly traded companies. For instance, Medtronic MiniMed, a division of Medtronic, Inc., has been the market leader for many years and has the majority share of the traditional insulin pump market in the United States. Other significant insulin pump suppliers in the United States include Animas Corporation, a division of Johnson & Johnson, Roche Diagnostics, a division of F. Hoffman-La Roche Ltd., and Insulet Corporation.

These competitors also enjoy several competitive advantages over us, including:

- greater financial and human resources for sales and marketing, and product development;
- established relationships with healthcare providers and third-party payors;
- established reputation and name recognition among healthcare providers and other key opinion leaders in the diabetes industry;
- in some cases, an established base of long-time customers;
- products supported by long-term clinical data;
- larger and more established distribution networks;
- greater ability to cross-sell products or provide incentives to healthcare providers to use their products; and
- more experience in conducting research and development, manufacturing, clinical trials, and obtaining regulatory approval or clearance.

In some instances, our competitors also offer products that include features that we do not currently offer. For instance, Medtronic currently offers a traditional insulin pump that is integrated with a CGM system with a recently approved threshold suspend feature, and Insulet offers an insulin pump with a tubeless delivery system that does not utilize an infusion set. For these and other reasons, we may not be able to compete successfully against our current or potential future competitors. As a result, we may fail to meet our strategic objectives and forecasted budget, and our business, financial condition and operating results could be materially and adversely affected.

Competitive products or other technological breakthroughs for the monitoring, treatment or prevention of diabetes or technological developments may render our products obsolete or less desirable.

Our ability to achieve our strategic objectives will depend, among other things, on our ability to develop and commercialize products for the treatment of diabetes that offer distinct features, are easy-to-use, receive adequate coverage and reimbursement from third-party payors, and are more appealing than available alternatives. Our primary competitors, as well as a number of other companies, medical researchers and existing pharmaceutical companies are pursuing new delivery devices, delivery technologies, sensing technologies, procedures, drugs and other therapies for the monitoring, treatment and prevention of diabetes. Any technological breakthroughs in diabetes monitoring, treatment or prevention could reduce the potential market for t:slim or render t:slim obsolete altogether, which would significantly reduce our sales.

Because of the size of the insulin-dependent diabetes market, we anticipate that companies will continue to dedicate significant resources to developing competitive products. The frequent introduction by competitors of products that are or claim to be superior to our products may create market confusion that may make it difficult to differentiate the benefits of our products over competitive products. In addition, the entry of multiple new products may lead some of our competitors to employ pricing strategies that could adversely affect the pricing of our products. If a competitor develops a product that competes with or is perceived to be superior to t:slim, or if a competitor employs strategies that place downward pressure on pricing within our industry, our sales may decline significantly or may not increase in line with our forecasts, either of which would materially adversely affect our business, financial condition and operating results.

Moreover, we have designed our products to resemble modern consumer electronic devices to address certain embarrassment and functionality concerns consumers have raised with respect to traditional pumps. The consumer electronics industry is itself highly competitive, and characterized by continual new product introductions, rapid developments in technology, and subjective and changing consumer preferences. If, in the future, consumers cease to view our products as contemporary or convenient as compared to then-existing consumer electronics technology, our products may become less desirable.

If we are unable to expand our sales, marketing and clinical infrastructure, we may fail to increase our sales to meet our forecasts.

Because we began commercialization of t:slim in the third quarter of 2012, we have only limited experience marketing and selling our products as well as training new customers on the use of t:slim. We derive nearly all of our revenue from the sale of t:slim and pump-related supplies and we expect that this will continue for the next several years unless and until we receive regulatory clearance or approval for other products currently in development. As a result, our financial condition and operating results are and will continue to be highly dependent on the ability of our sales representatives to adequately promote, market and sell t:slim and the ability of our diabetes educators to train new customers on the use of t:slim. If our sales and marketing representatives or diabetes educators fail to achieve their objectives, our sales could decrease or may not increase at levels that are in line with our forecasts.

A key element of our business strategy is the continued expansion of our sales, marketing and clinical infrastructure to drive adoption of our products, which includes our team of diabetes educators that trains new customers on the use of t:slim. We have rapidly increased the number of sales, marketing and clinical personnel employed by us since the initial commercial launch of t:slim. However, we have faced considerable challenges in quickly growing our sales, marketing and clinical force over the past 12-18 months, including with respect to recruiting, training and assimilation of new territories and accounts. We expect to continue to face significant challenges as we manage and grow our sales, marketing and clinical infrastructure and work to retain the individuals who make up those networks. If any of our sales, marketing or clinical representatives were to leave us, our sales could be adversely affected. If a sales, marketing or clinical representative were to depart and be retained by one of our competitors, we may fail to prevent them from helping competitors solicit business from our existing customers, which could further adversely affect our sales. In addition, if we are not able to recruit and retain a network of diabetes educators, we may not be able to successfully train new customers on the use of t:slim, which could delay new sales and harm our reputation.

As we increase our sales, marketing and clinical expenditures with respect to existing or planned products, we will need to further expand the reach of our sales, marketing and clinical networks. Our future success will depend largely on our ability to continue to hire, train, retain and motivate skilled sales, marketing and clinical representatives with significant industry-specific knowledge in various areas, such as diabetes treatment techniques and technologies, as well as the competitive landscape for our products. Recently hired sales representatives require training and take time to achieve full productivity. If we fail to train recent hires adequately, or if we experience high turnover in our sales force in the future, we cannot be certain that new hires will become as productive as may be necessary to maintain or increase our sales. In addition, the expansion of our sales, marketing and clinical personnel will continue to place significant burdens on our management team.

If we are unable to expand our sales, marketing and clinical capabilities, we may not be able to effectively commercialize our existing or planned products, or enhance the strength of our brand, either of which could result in the failure of our sales to increase in line with our forecasts.

Our sales and marketing efforts are dependent on independent distributors who are free to market products that compete with t:slim. If we are unable to maintain or expand our network of independent distributors, our sales may be negatively affected.

For the year ended December 31, 2013, approximately 69% of our sales were generated through 32 independent distributors. While we expect that the percentage of our sales generated from independent distributors will decrease over time as we enter into contracts with additional third party payors, we believe that a meaningful percentage of our sales will continue to be generated by independent distributors for the foreseeable future. None of our independent distributors has been required to sell our products exclusively and each of them may freely sell the products of our competitors. Our distributor agreements generally have one year initial terms with automatic one-year renewal terms, and are terminable in connection with a party's material breach.

Some of our independent distributors account for a significant portion of our sales volume. For the year ended December 31, 2013, our two largest independent distributors comprised approximately 30% of our sales. If any of our key independent distributors were to cease to distribute our products, our sales could be adversely affected. In such a situation, we may need to seek alternative independent distributors or increase our reliance on our

other independent distributors or our direct sales representatives, which may not prevent our sales from being adversely affected. Additionally, to the extent that we enter into additional arrangements with independent distributors to perform sales, marketing, or distribution services, the terms of the arrangements could cause our product margins to be lower than if we directly marketed and sold our products.

Our ability to maintain and grow our revenue depends in part on retaining a high percentage of our customer base.

A key to maintaining and growing our revenue is the retention of a high percentage of our customers due to the potentially significant revenue generated from ongoing purchases of disposable insulin cartridges. In addition, t:slim is designed and tested to remain effective for four years and a satisfied customer may consider purchasing another product from us when the time comes to replace the pump. We have developed retention programs aimed at customers, their caregivers and healthcare providers, which include training specific to t:slim, ongoing support by sales and clinical employees and 24/7 technical support and customer service. If demand for our products fluctuates as a result of the introduction of competitive products, changes in reimbursement policies, manufacturing problems, perceived safety or reliability issues with our or competitors' products, the failure to secure regulatory clearance or approvals, or for other reasons, our ability to attract and retain customers could be harmed. The failure to retain a high percentage of our customers would negatively impact our revenue growth and may have a material adverse effect on our business, financial condition and operating results.

If important assumptions about the potential market for our products are inaccurate, or if we have failed to understand what people with insulin-dependent diabetes are seeking in an insulin pump, our business and operating results may be adversely affected.

Our business strategy was developed based on a number of important assumptions about the diabetes industry in general, and the insulin-dependent diabetes market in particular, any one or more of which may prove to be inaccurate. For example, we believe that the benefits of insulin pump therapy as compared to other common insulin treatment alternatives will continue to drive growth in the market for insulin pump therapy. In addition, we believe the incidence of diabetes in the United States and worldwide is increasing rapidly. However, each of these trends is uncertain and limited sources exist to obtain reliable market data. The actual incidence of diabetes, and the actual demand for our products or competitive products, could differ materially from our projections if our assumptions are incorrect. In addition, our strategy of focusing exclusively on the insulin-dependent diabetes market may limit our ability to increase sales or achieve profitability.

Another key element of our business strategy is utilizing market research to understand what people with diabetes are seeking to improve their diabetes therapy management. This strategy underlies our entire product design, marketing and customer support approach and is the basis on which we developed t:slim. However, our market research is based on interviews, focus groups and online surveys involving people with insulin-dependent diabetes, their caregivers and healthcare providers that represent only a small percentage of the overall insulin-dependent diabetes market. As a result, the responses we received may not be reflective of the broader market and may not provide us accurate insight into the desires of people with insulin-dependent diabetes. In addition, understanding the meaning and significance of the responses received during our market research necessarily requires that analysis be conducted and conclusions be drawn. We may not be able perform an analysis that yields meaningful results, or the conclusions we draw from the analysis could be misleading. Moreover, even if our market research has allowed us to better understand the features consumers are seeking in an insulin pump to improve management of their diabetes therapy, there can be no assurance that consumers will actually purchase our products or that our competitors will not develop products with similar features.

We have a limited operating history and may face difficulties encountered by companies early in their commercialization in competitive and rapidly evolving markets.

We commenced operations in 2006 and began commercializing t:slim in the third quarter of 2012. Accordingly, we have a limited operating history upon which to evaluate our business and forecast our future sales and operating results. In assessing our business prospects, you should consider the various risks and difficulties frequently encountered by companies early in their commercialization in competitive and rapidly evolving markets, particularly companies that develop and sell medical devices. These risks include our ability to:

- implement and execute our business strategy;

- expand and improve the productivity of our sales and marketing infrastructure to grow sales of our existing and proposed products;
- increase awareness of our brand and build loyalty among people with insulin-dependent diabetes, their caregivers and healthcare providers;
- manage expanding operations;
- expand our manufacturing capabilities, including increasing production of current products efficiently while maintaining quality standards and adapting our manufacturing facilities to the production of new products;
- respond effectively to competitive pressures and developments;
- enhance our existing products and develop proposed products;
- obtain and maintain regulatory clearance or approval to commercialize proposed products and enhance our existing products;
- perform clinical trials with respect to our existing products and proposed products; and
- attract, retain and motivate qualified personnel in various areas of our business.

Due to our limited operating history, we may not have the institutional knowledge or experience to be able to effectively address these and other risks that may face our business. In addition, we may not be able to develop insights into trends that could emerge and negatively affect our business and may fail to respond effectively to those trends. As a result of these or other risks, we may not be able to execute key components of our business strategy, and our business, financial condition and operating results may suffer.

Manufacturing risks may adversely affect our ability to manufacture products and could reduce our gross margins and negatively affect our operating results.

Our business strategy depends on our ability to manufacture our current and proposed products in sufficient quantities and on a timely basis so as to meet consumer demand, while adhering to product quality standards, complying with regulatory requirements and managing manufacturing costs. We are subject to numerous risks relating to our manufacturing capabilities, including:

- quality or reliability defects in product components that we source from third party suppliers;
- our inability to secure product components in a timely manner, in sufficient quantities or on commercially reasonable terms;
- our failure to increase production of products to meet demand;
- the challenge of implementing and maintaining acceptable quality systems while experiencing rapid growth;
- our inability to modify production lines to enable us to efficiently produce future products or implement changes in current products in response to regulatory requirements;
- difficulty identifying and qualifying alternative suppliers for components in a timely manner; and
- potential damage to or destruction of our manufacturing equipment or manufacturing facility.

These risks are likely to be exacerbated by our limited experience with our current products and manufacturing processes. As demand for our products increases, we will have to invest additional resources to purchase components, hire and train employees, and enhance our manufacturing processes and quality systems. If we fail to increase our production capacity efficiently while also maintaining quality requirements, our sales may not increase in line with our forecasts and our operating margins could fluctuate or decline. In addition, although we expect some of our products in development to share product features and components with t:slim, manufacturing of

these products may require the modification of our production lines, the hiring of specialized employees, the identification of new suppliers for specific components, or the development of new manufacturing technologies. It may not be possible for us to manufacture these products at a cost or in quantities sufficient to make these products commercially viable.

We depend on a limited number of third-party suppliers for certain components, and the loss of any of these suppliers, or their inability to provide us with an adequate supply of materials, could harm our business.

We rely on third-party suppliers to supply components of t:slim and of our potential future products. For example, we rely on plastic injection molding companies to provide plastic molded components, electronic manufacturing suppliers to provide electronic assemblies, and machining companies to provide machined mechanical components. For our business strategy to be successful, our suppliers must be able to provide us with components in sufficient quantities, in compliance with regulatory requirements and quality control standards, in accordance with agreed upon specifications, at acceptable costs and on a timely basis. Increases in our product sales, whether forecasted or unanticipated, could strain the ability of our suppliers to deliver an increasingly large supply of components in a manner that meets these various requirements.

We do not have long-term supply agreements with most of our suppliers and, in many cases, we make our purchases on a purchase order basis. Under most of our supply agreements, we have no obligation to buy any given quantity of products, and our suppliers have no obligation to manufacture for us or sell to us any given quantity of products. As a result, our ability to purchase adequate quantities of our products may be limited. Additionally, our suppliers may encounter problems that limit their ability to manufacture products for us, including financial difficulties or damage to their manufacturing equipment or facilities. If we fail to obtain sufficient quantities of high quality components to meet demand on a timely basis, we could lose customer orders, our reputation may be harmed and our business could suffer.

We generally use a small number of suppliers for our products. Depending on a limited number of suppliers exposes us to risks, including limited control over pricing, availability, quality and delivery schedules. Moreover, due to the recent commercialization of our products and the limited amount of our sales to date, we do not have long-standing relationships with our manufacturers and may not be able to convince suppliers to continue to make components available to us unless there is demand for such components from their other customers. As a result, there is a risk that certain components could be discontinued and no longer available to us. We have in the past been, and we may in the future be, required to make significant “last time” purchases of component inventory that is being discontinued by the manufacturer to ensure supply continuity. If any one or more of our suppliers cease to provide us with sufficient quantities of components in a timely manner or on terms acceptable to us, we would have to seek alternative sources of supply. Because of factors such as the proprietary nature of our products, our quality control standards and regulatory requirements, we cannot quickly engage additional or replacement suppliers for some of our critical components. Failure of any of our suppliers to deliver products at the level our business requires would limit our ability to meet our sales commitments, which could harm our reputation and could have a material adverse effect on our business. We may also have difficulty obtaining similar components from other suppliers that are acceptable to FDA, or other regulatory agencies, and the failure of our suppliers to comply with strictly enforced regulatory requirements could expose us to regulatory action including warning letters, product recalls, termination of distribution, product seizures or civil penalties. It could also require us to cease using the components, seek alternative components or technologies and modify our products to incorporate alternative components or technologies, which could result in a requirement to seek additional regulatory approvals. Any disruption of this nature or increased expenses could harm our commercialization efforts and adversely affect our operating results.

We operate primarily at a facility in a single location, and any disruption at this facility could adversely affect our business and operating results.

Our principal offices are presently located in three contiguous buildings in San Diego, California. Substantially all of our operations are conducted at this location, including our manufacturing processes, research and development activities, customer and technical support, and management and administrative functions. In addition, substantially all of our inventory of component supplies and finished goods is held at this location. We take precautions to safeguard our facility, including acquiring insurance, employing back-up generators, adopting health and safety protocols and utilizing off-site storage of computer data. However, vandalism, terrorism or a natural or

other disaster, such as an earthquake, fire or flood, could damage or destroy our manufacturing equipment or our inventory of component supplies or finished goods, cause substantial delays in our operations, result in the loss of key information, and cause us to incur additional expenses. Our insurance may not cover our losses in any particular case. In addition, regardless of the level of insurance coverage, damage to our facilities may have a material adverse effect on our business, financial condition and operating results.

If we do not enhance our product offerings through our research and development efforts, we may fail to effectively compete or become profitable.

In order to increase our sales and our market share in the insulin-dependent diabetes market, we must enhance and broaden our product offerings in response to the evolving demands of people with insulin-dependent diabetes and healthcare providers, as well as competitive pressures and technologies. We may not be successful in developing, obtaining regulatory approval for, or marketing our proposed products when anticipated, or at all. In addition, notwithstanding our market research efforts, our future products may not be accepted by consumers, their caregivers, healthcare providers or third-party payors who reimburse consumers for our products. The success of any proposed product offerings will depend on numerous factors, including our ability to:

- identify the product features that people with insulin-dependent diabetes, their caregivers and healthcare providers are seeking in an insulin pump and successfully incorporate those features into our products;
- develop and introduce proposed products in sufficient quantities and in a timely manner;
- offer products at a price that is competitive with other products then available;
- adequately protect our intellectual property and avoid infringing upon the intellectual property rights of third-parties;
- demonstrate the safety and efficacy of proposed products; and
- obtain the necessary regulatory approvals for proposed products.

If we fail to generate demand by developing products that incorporate features requested by consumers, their caregivers or healthcare providers, or if we do not obtain regulatory clearance or approval for proposed products in time to meet market demand, we may fail to generate sales sufficient to achieve or maintain profitability. We have in the past experienced, and we may in the future experience, delays in various phases of product development and commercial launch, including during research and development, manufacturing, limited release testing, marketing and customer education efforts. Any delays in our anticipated regulatory submissions or approvals, or subsequent product launches, may significantly impede our ability to successfully compete in our markets. In particular, such delays could cause customers to delay or forego purchases of our products, or to purchase our competitors' products. Even if we are able to successfully develop proposed products when anticipated, these products may not produce sales in excess of the costs of development, and they may be quickly rendered obsolete by changing consumer preferences or the introduction by our competitors of products embodying new technologies or features.

The safety and efficacy of our products is not supported by long-term clinical data, which could limit sales, and our products could cause unforeseen negative effects.

The product we currently market in the United States received pre-market clearance under Section 510(k) of the U.S. Federal Food, Drug, and Cosmetic Act, or FDCA. This process is shorter and typically requires the submission of less supporting documentation than other FDA approval processes and does not always require long-term clinical studies. As a result, we currently lack the breadth of published long-term clinical data supporting the safety and efficacy of our products and the benefits they offer that might have been generated in connection with other approval processes. For these reasons, people with insulin-dependent diabetes and healthcare providers may be slower to adopt or recommend our products, we may not have comparative data that our competitors have or are generating, third-party payors may not be willing to provide coverage or reimbursement for our products and we may be subject to greater regulatory and product liability risks. Further, future studies or clinical experience may indicate that treatment with our products is not superior to treatment with competitive products. Such results could

slow the adoption of our products and significantly reduce our sales, which could prevent us from achieving our forecasted sales targets or achieving or sustaining profitability. Moreover, if future results and experience indicate that our products cause unexpected or serious complications or other unforeseen negative effects, we could be subject to mandatory product recalls, suspension or withdrawal of FDA clearance or approval, significant legal liability or harm to our business reputation.

Any alleged illness or injury associated with any of our products or product recall may negatively impact our financial results and business prospects depending on the scope, degree of publicity, reaction of our customers, healthcare professionals, and collaborators, competitive reaction, and consumer attitudes overall. Even if such an allegation or product liability claim lacks merit, cannot be substantiated, is unsuccessful or is not fully pursued, the negative publicity surrounding any assertion that our products caused illness, injury or death could adversely affect our reputation with customers, healthcare professionals, and existing and potential collaborators, and could adversely affect our operating results and cause a decline in our stock price.

We may enter into collaborations, in-licensing arrangements, joint ventures, strategic alliances or partnerships with third-parties that may not result in the development of commercially viable products or the generation of significant future revenues.

In the ordinary course of our business, we may enter into collaborations, in-licensing arrangements, joint ventures, strategic alliances or partnerships to develop proposed products and to pursue new markets. Proposing, negotiating and implementing collaborations, in-licensing arrangements, joint ventures, strategic alliances or partnerships may be a lengthy and complex process. Other companies, including those with substantially greater financial, marketing, sales, technology or other business resources, may compete with us for these opportunities or arrangements. We may not identify, secure, or complete any such transactions or arrangements in a timely manner, on a cost-effective basis, on acceptable terms or at all. We have limited institutional knowledge and experience with respect to these business development activities, and we may also not realize the anticipated benefits of any such transaction or arrangement. In particular, these collaborations may not result in the development of products that achieve commercial success or result in significant revenues and could be terminated prior to developing any products.

Additionally, we may not be in a position to exercise sole decision making authority regarding the transaction or arrangement, which could create the potential risk of creating impasses on decisions, and our collaborators may have economic or business interests or goals that are, or that may become, inconsistent with our business interests or goals. It is possible that conflicts may arise with our collaborators, such as conflicts concerning the achievement of performance milestones, or the interpretation of significant terms under any agreement, such as those related to financial obligations or the ownership or control of intellectual property developed during the collaboration. If any conflicts arise with our current or future collaborators, they may act in their self-interest, which may be adverse to our best interest, and they may breach their obligations to us. In addition, we have limited control over the amount and timing of resources that our current collaborators or any future collaborators devote to our collaborators' or our future products. Disputes between us and our collaborators may result in litigation or arbitration which would increase our expenses and divert the attention of our management. Further, these transactions and arrangements are contractual in nature and may be terminated or dissolved under the terms of the applicable agreements and, in such event, we may not continue to have rights to the products relating to such transaction or arrangement or may need to purchase such rights at a premium.

For example, we have entered into a development and commercialization agreement with DexCom, which provides us a non-exclusive license to integrate the DexCom G4 PLATINUM Continuous Glucose Monitor with t:sensor during the term of the agreement. This agreement runs until February 1, 2015, with automatic one-year renewals. The license granted covers the United States and other territories may be added from time to time. Subject to payments of certain of the non-terminating party's development expenses, the agreement may be terminated by either party without cause. Termination of this agreement could require us to redesign t:sensor and attempt to integrate an alternative CGM system into t:sensor, which would require significant development and regulatory activities that might delay the launch and commercialization of this product or, following its launch, might not be completed in time to prevent an interruption in the availability of t:sensor to our customers.

We may seek to grow our business through acquisitions of complementary products or technologies, and the failure to manage acquisitions, or the failure to integrate them with our existing business, could have a material adverse effect on our business, financial condition and operating results.

From time to time, we may consider opportunities to acquire other products or technologies that may enhance our product platform or technology, expand the breadth of our markets or customer base, or advance our business strategies. Potential acquisitions involve numerous risks, including:

- problems assimilating the acquired products or technologies;
- issues maintaining uniform standards, procedures, controls and policies;
- unanticipated costs associated with acquisitions;
- diversion of management's attention from our existing business;
- risks associated with entering new markets in which we have limited or no experience; and
- increased legal and accounting costs relating to the acquisitions or compliance with regulatory matters.

We have no current commitments with respect to any acquisition. We do not know if we will be able to identify acquisitions we deem suitable, whether we will be able to successfully complete any such acquisitions on favorable terms or at all, or whether we will be able to successfully integrate any acquired products or technologies. Our potential inability to integrate any acquired products or technologies effectively may adversely affect our business, operating results and financial condition.

If there are significant disruptions in our information technology systems, our business, financial condition and operating results could be adversely affected.

The efficient operation of our business depends on our information technology systems. We rely on our information technology systems to effectively manage sales and marketing data, accounting and financial functions, inventory management, product development tasks, research and development data, customer service and technical support functions. Our information technology systems are vulnerable to damage or interruption from earthquakes, fires, floods and other natural disasters, terrorist attacks, attacks by computer viruses or hackers, power losses, and computer system or data network failures. In addition, t:connect, our cloud-based data management application, is hosted by a third-party service provider whose security and information technology systems are subject to similar risks, and our t:slim Pumps and products currently in development contain software which could be subject to computer virus or hacker attacks or other failures.

The failure of our or our service providers' information technology systems or our pumps' software to perform as we anticipate or our failure to effectively implement new information technology systems could disrupt our entire operation or adversely affect our software products and could result in decreased sales, increased overhead costs, and product shortages, all of which could have a material adverse effect on our reputation, business, financial condition and operating results.

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

Our rapid growth has placed, and we expect that it will continue to place, a significant strain on our management team and on our financial resources. For example, between December 31, 2012 and December 31, 2013 our employee base has nearly doubled and we expect to continue to experience rapid growth of our employee base during 2014. Failure to manage our growth effectively could cause us to misallocate management or financial resources, and result in losses or weaknesses in our infrastructure, which could materially adversely affect our business. Additionally, our anticipated growth will increase the demands placed on our suppliers, resulting in an increased need for us to manage our suppliers and monitor for quality assurance. Any failure by us to manage our growth effectively could have an adverse effect on our ability to achieve our business objectives.

We depend on the knowledge and skills of our senior management and other key employees, and if we are unable to retain and motivate them or recruit additional qualified personnel, our business may suffer.

We have benefited substantially from the leadership and performance of our senior management, as well as certain key employees. For example, our chief executive officer, as well as other key members of management, have experience successfully scaling an early stage medical device company to achieve profitability. Our success will depend on our ability to retain our current management and key employees, and to attract and retain qualified personnel in the future. Competition for senior management and key employees in our industry is intense and we cannot guarantee that we will be able to retain our personnel or attract new, qualified personnel. The loss of the services of certain members of our senior management or key employees could prevent or delay the implementation and completion of our strategic objectives, or divert management's attention to seeking qualified replacements. Each member of senior management as well as our key employees may terminate employment without notice and without cause or good reason. The members of our senior management are not subject to non-competition agreements. Accordingly, the adverse effect resulting from the loss of certain members of senior management could be compounded by our inability to prevent them from competing with us.

In addition, the sale of our products is logistically complex, requiring us to maintain an extensive sales, marketing and clinical infrastructure consisting of sales representatives, clinical diabetes educators and customer support personnel. We face considerable challenges in recruiting, training, managing, motivating and retaining the members of these teams, including managing geographically dispersed efforts. These challenges are exacerbated by the fact that our strategic plan requires us to rapidly grow our sales, marketing and clinical infrastructure in order to generate demand for our products. If we fail to maintain and grow a dedicated team of sales and marketing and clinical personnel, we could fail to take advantage of an opportunity to enhance brand recognition and grow sales, and our business, financial condition and operating results could be adversely affected.

If we are found to have violated laws protecting the confidentiality of patient health information, we could be subject to civil or criminal penalties, which could increase our liabilities and harm our reputation or our business.

There are a number of federal and state laws protecting the confidentiality of certain patient health information, including patient records, and restricting the use and disclosure of that protected information. In particular, the U.S. Department of Health and Human Services, or HHS, promulgated patient privacy rules under the HIPAA. These privacy rules protect medical records and other personal health information by limiting their use and disclosure, giving individuals the right to access, amend and seek accounting of their own health information and limiting most use and disclosures of health information to the minimum amount reasonably necessary to accomplish the intended purpose. If we or any of our service providers are found to be in violation of the promulgated patient privacy rules under HIPAA, we could be subject to civil or criminal penalties, which could increase our liabilities, harm our reputation and have a material adverse effect on our business, financial condition and operating results.

Risks Related to our Financial Results and Need for Financing

We will need to generate significant sales to achieve profitable operations.

We intend to increase our operating expenses substantially in connection with the continued growth of our sales and marketing infrastructure, our ongoing research and development activities, the expansion of our manufacturing capabilities, and the commensurate development of our management team, administrative functions and facilities. We will need to generate significant sales to achieve profitability, and we might not be able to do so. Even if we do generate significant sales, we might not be able to achieve, sustain or increase profitability on a quarterly or annual basis in the future. If our sales grow more slowly than we have forecasted, or if our operating expenses exceed our expectations, our financial performance and results of operations will be adversely affected.

Our future capital needs are uncertain and we may need to raise additional funds in the future, and these funds may not be available on acceptable terms or at all.*

At March 31, 2014, we had $110.8 million in cash, cash equivalents and short term investments. We believe that our available cash, cash available under our term loan agreement and proceeds from the exercise of warrants and options will be sufficient to satisfy our liquidity requirements for at least the next 18 months. However, the continued growth of our business, including the expansion of our sales and marketing infrastructure, research

and development activities, and manufacturing capabilities, will significantly increase our expenses. In addition, the amount of our future product sales is difficult to predict, especially in light of the recent commercialization of t:slim, and actual sales may not be in line with our forecasts. As a result, we may be required to seek additional funds in the future. Our future capital requirements will depend on many factors, including:

- the revenue generated by sales of t:slim and any other future products that we may develop and commercialize;
- the costs associated with expanding our sales and marketing infrastructure;
- the expenses we incur in maintaining our manufacturing facility and adding further manufacturing equipment and capacity;
- the cost associated with developing and commercializing our proposed products or technologies;
- the cost of obtaining and maintaining regulatory clearance or approval for our current or future products;
- the cost of ongoing compliance with regulatory requirements;
- expenses we incur in connection with potential litigation or governmental investigations;
- anticipated or unanticipated capital expenditures; and
- unanticipated general and administrative expenses.

As a result of these and other factors, we do not know whether and the extent to which we may be required to raise additional capital. We may in the future seek additional capital from public or private offerings of our capital stock, borrowings under credit lines or other sources. If we issue equity or debt securities to raise additional funds, our existing stockholders may experience dilution, and the new equity or debt securities may have rights, preferences and privileges senior to those of our existing stockholders. In addition, if we raise additional funds through collaborations, licensing, joint ventures, strategic alliances, partnership arrangements or other similar arrangements, it may be necessary to relinquish valuable rights to our potential future products or proprietary technologies, or grant licenses on terms that are not favorable to us.

If we are unable to raise additional capital, we may not be able to expand our sales and marketing infrastructure, enhance our current products or develop new products, take advantage of future opportunities, or respond to competitive pressures, changes in supplier relationships, or unanticipated changes in customer demand. Any of these events could adversely affect our ability to achieve our strategic objectives, which could have a material adverse effect on our business, financial condition and operating results.

Our operating results may fluctuate significantly from quarter to quarter.

We began commercial sales of t:slim in the third quarter of 2012. Although we have a very limited operating history, there has been and there may continue to be meaningful variability in our operating results among quarters, as well as within each quarter. Our operating results, and the variability of these operating results, will be affected by numerous factors, including:

- our ability to increase sales of t:slim and to commercialize and sell our future products, and the number of our products sold in each quarter;
- acceptance of our products by people with insulin-dependent diabetes, their caregivers, healthcare providers and third-party payors;
- the pricing of our products and competitive products, and the effect of third-party coverage and reimbursement policies;
- our ability to establish and grow an effective sales and marketing infrastructure;

- the amount of, and the timing of the payment for, insurance deductibles required to be paid by our customers and potential customers under their existing insurance plans;
- interruption in the manufacturing or distribution of our products;
- our ability to manufacture products that meet quality and reliability requirements;
- seasonality and other factors affecting the timing of purchases of our products;
- timing of new product offerings, acquisitions, licenses or other significant events by us or our competitors;
- results of clinical research and trials on our existing and future products;
- the ability of our suppliers to timely provide us with an adequate supply of components that meet our requirements;
- regulatory clearance or approvals affecting our products or those of our competitors; and
- the timing of revenue recognition associated with our product sales pursuant to applicable accounting standards.

As a result of our limited operating history, and due to the complexities of the industry in which we operate, it will be difficult for us to forecast demand for our current or future products with any degree of certainty, which means it will be difficult for us to forecast our sales. In addition, we will be significantly increasing our operating expenses as we expand our business. Accordingly, we may experience substantial variability in our operating results from quarter to quarter, including unanticipated quarterly losses. If our quarterly or annual operating results fall below the expectations of investors or securities analysts, the price of our common stock could decline substantially. Furthermore, any quarterly or annual fluctuations in our operating results may, in turn, cause the price of our common stock to fluctuate substantially. We believe that quarterly comparisons of our financial results are not necessarily meaningful and should not be relied upon as an indication of our future performance.

We may not be able to generate sufficient cash to service our indebtedness, which currently consists of our credit facility with Capital Royalty Partners.*

As of March 31, 2013, we owed an aggregate principal amount of $30 million to Capital Royalty Partners pursuant to a term loan agreement under which we could borrow up to a total of $45 million under certain circumstances. In April 2014, we entered into an amended and restated term loan agreement with Capital Royalty Partners and their related affiliates. The amended and restated term loan agreement, among other things, amends the terms of the original term loan agreement to reduce the borrowing limit to $30.0 million. Concurrently, we also entered into a new term loan agreement with the Capital Royalty Partners and their related affiliates, under which the Company may borrow up to an additional $30.0 million on or before March 31, 2015. Our ability to make scheduled payments or to refinance our debt obligations depends on numerous factors, including the amount of our cash reserves and our actual and projected financial and operating performance. These amounts and our performance are subject to certain financial and business factors, as well as prevailing economic and competitive conditions, some of which may be beyond our control. We cannot assure you that we will maintain a level of cash reserves or cash flows from operating activities sufficient to permit us to pay the principal, premium, if any, and interest on our existing or future indebtedness. If our cash flows and capital resources are insufficient to fund our debt service obligations, we may be forced to reduce or delay capital expenditures, sell assets or operations, seek additional capital or restructure or refinance our indebtedness. We cannot assure you that we would be able to take any of these actions, or that these actions would permit us to meet our scheduled debt service obligations. In addition, in the event of our breach of the term loan agreement with Capital Royalty Partners, we may not be allowed to draw additional amounts under the agreement, and we may be required to repay any outstanding amounts earlier than anticipated.

Our term loan agreements contain restrictive and financial covenants that may limit our operating flexibility.*

Our loan agreements with Capital Royalty Partners and Silicon Valley Bank contain certain restrictive covenants that limit our ability to incur additional indebtedness and liens, merge with other companies or consummate certain changes of control, acquire other companies, engage in new lines of business, make certain investments, pay dividends, transfer or dispose of assets, amend certain material agreements or enter into various specified transactions. We therefore may not be able to engage in any of the foregoing transactions unless we obtain the consent of the lenders or terminate the applicable loan agreement. Our term loan agreements also contain certain financial covenants, including minimum revenue and cash balance requirements, and financial reporting requirements. There is no guarantee that we will be able to generate sufficient cash flow or sales to meet the financial covenants or pay the principal and interest under our agreements. Furthermore, there is no guarantee that future working capital, borrowings or equity financing will be available to repay or refinance the amounts outstanding under a given agreement.

Prolonged negative economic conditions could adversely affect us, our customers and suppliers, which could harm our financial condition.

We are subject to the risks arising from adverse changes in general economic and market conditions. Uncertainty remains in the U.S. economy as it continues to recover from a severe economic recession. The U.S. economy continues to experience market volatility, difficulties in the financial services sector, diminished liquidity and availability of credit, reduced property values, concerns regarding inflation, increases in the cost of commodities, continuing high unemployment rates, reduced consumer spending and consumer confidence, and continuing economic uncertainties. The economic turmoil and the uncertainty about future economic conditions could negatively impact our existing and potential customers, adversely affect the financial ability of health insurers to pay claims, adversely impact our expenses and ability to obtain financing of our operations, and cause delays or other problems with key suppliers. We cannot predict the timing or impact of the recovery from this economic uncertainty.

Healthcare spending in the United States has been, and is expected to continue to be, negatively affected by the recent recession and continuing economic uncertainty. For example, patients who have lost their jobs or healthcare coverage may no longer be covered by an employer-sponsored health insurance plan, and patients reducing their overall spending may eliminate healthcare-related purchases. The recent recession and continuing economic uncertainty has also impacted the financial stability of many private health insurers. As a result, we believe that some insurers are scrutinizing insurance claims more rigorously and delaying or denying reimbursement more often. Since the sale of t:slim generally depends on the availability of third-party reimbursement, any delay or decline in reimbursement will adversely affect our sales.

Risks Related to our Intellectual Property and Potential Litigation

Our ability to protect our intellectual property and proprietary technology is uncertain.*

We rely primarily on patent, trademark and trade secret laws, as well as confidentiality and non-disclosure agreements, to protect our proprietary technologies. As of March 31, 2014, our patent portfolio consisted of approximately 24 issued U.S. patents and 55 pending U.S. patent applications. Of these, our issued U.S. patents expire between approximately 2021 and 2031. We are also seeking patent protection for our proprietary technology in other countries throughout the world. We also have nine pending U.S. trademark applications and seven pending foreign trademark applications, as well as 13 trademark registrations, including four U.S. trademark registrations and nine foreign trademark registrations.

We have applied for patent protection relating to certain existing and proposed products and processes. Currently, three of our issued U.S. patents as well as various pending U.S. and foreign patent applications relate to the structure and operation of our pumping mechanism and are therefore particularly important to the functionality of our products. If we fail to timely file a patent application in any jurisdiction, we may be precluded from doing so at a later date. Furthermore, we cannot assure you that any of our patent applications will be approved in a timely manner or at all. The rights granted to us under our patents, and the rights we are seeking to have granted in our pending patent applications, may not be meaningful or provide us with any commercial advantage. In addition, those rights could be opposed, contested or circumvented by our competitors, or be declared invalid or unenforceable in judicial or administrative proceedings. The failure of our patents to adequately protect our technology might make it easier for our competitors to offer the same or similar products or technologies. Even if we are successful in receiving patent protection for certain products and processes, our competitors may be able to design around our patents or develop products that provide outcomes which are comparable to ours without infringing on our

intellectual property rights. Due to differences between foreign and U.S. patent laws, our patented intellectual property rights may not receive the same degree of protection in foreign countries as they would in the United States. Even if patents are granted outside the United States, effective enforcement in those countries may not be available.

We rely on our trademarks and trade names to distinguish our products from the products of our competitors, and have registered or applied to register many of these trademarks. We cannot assure you that our trademark applications will be approved in a timely manner or at all. Third-parties also may oppose our trademark applications, or otherwise challenge our use of the trademarks. In the event that our trademarks are successfully challenged, we could be forced to rebrand our products, which could result in loss of brand recognition, and could require us to devote additional resources to marketing new brands. Further, we cannot assure you that competitors will not infringe upon our trademarks, or that we will have adequate resources to enforce our trademarks.

We have entered into confidentiality agreements and intellectual property assignment agreements with our officers, employees, temporary employees and consultants regarding our intellectual property and proprietary technology. In the event of unauthorized use or disclosure or other breaches of those agreements, we may not be provided with meaningful protection for our trade secrets or other proprietary information.

If a competitor infringes upon one of our patents, trademarks or other intellectual property rights, enforcing those patents, trademarks and other rights may be difficult and time consuming. Patent law relating to the scope of claims in the industry in which we operate is subject to rapid change and constant evolution and, consequently, patent positions in our industry can be uncertain. Even if successful, litigation to defend our patents and trademarks against challenges or to enforce our intellectual property rights could be expensive and time consuming and could divert management's attention from managing our business. Moreover, we may not have sufficient resources or desire to defend our patents or trademarks against challenges or to enforce our intellectual property rights. Litigation also puts our patents at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing. Additionally, we may provoke third-parties to assert claims against us. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded, if any, may not be commercially valuable. The occurrence of any of these events may have a material adverse effect on our business, financial condition and operating results.

The medical device industry is characterized by patent litigation, and we could become subject to litigation that could be costly, result in the diversion of management's time and efforts, or require us to pay damages.

Our success will depend in part on not infringing the patents or violating the other proprietary rights of third-parties. Significant litigation regarding patent rights exists in our industry. Our competitors in both the United States and abroad, many of which have substantially greater resources and have made substantial investments in competing technologies, may have applied for or obtained or may in the future apply for and obtain, patents that will prevent, limit or otherwise interfere with our ability to make and sell our products. The large number of patents, the rapid rate of new patent issuances, and the complexities of the technology involved increase the risk of patent litigation.

In the future, we could receive communications from various industry participants alleging our infringement of their intellectual property rights. Any potential intellectual property litigation could force us to do one or more of the following:

- stop selling our products or using technology that contains the allegedly infringing intellectual property;
- incur significant legal expenses;
- pay substantial damages to the party whose intellectual property rights we are allegedly infringing;
- redesign those products that contain the allegedly infringing intellectual property; or
- attempt to obtain a license to the relevant intellectual property from third-parties, which may not be available on reasonable terms or at all.

Any litigation or claim against us, even those without merit, may cause us to incur substantial costs, and could place a significant strain on our financial resources, divert the attention of management from our core business and harm our reputation. Further, as the number of participants in the diabetes market increases, the possibility of intellectual property infringement claims against us increases.

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

Many of our employees were previously employed at other medical device companies, including those that are our direct competitors or could potentially be our direct competitors. In some cases, those employees joined our company recently. We may be subject to claims that we, or our employees, have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of these former employers or competitors. In addition, we have been and may in the future be subject to allegations that we caused an employee to breach the terms of his or her non-competition or non-solicitation agreement. Litigation may be necessary to defend against these claims. Even if we successfully defend against these claims, litigation could cause us to incur substantial costs, and could place a significant strain on our financial resources, divert the attention of management from our core business and harm our reputation. If our defense to those claims fails, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. We cannot guarantee that this type of litigation will not continue, and any future litigation or the threat thereof may adversely affect our ability to hire additional direct sales representatives. A loss of key personnel or their work product could hamper or prevent our ability to commercialize proposed products, which could have an adverse effect on our business, financial condition and operating results.

We may incur product liability losses, and insurance coverage may be inadequate or unavailable to cover these losses.

Our business exposes us to potential product liability claims that are inherent in the design, manufacture, testing and sale of medical devices. We could become the subject of product liability lawsuits alleging that component failures, manufacturing flaws, design defects or inadequate disclosure of product-related risks or product-related information resulted in an unsafe condition, injury or death to customers. The risk of one or more product liability claims or lawsuit may be even greater following our January 2014 voluntary recall of cartridges used with the t:slim Pump. In addition, the misuse of our products or the failure of customers to adhere to operating guidelines could cause significant harm to customers, including death, which could result in product liability claims. Product liability lawsuits and claims, safety alerts or product recalls, with or without merit, could cause us to incur substantial costs, and could place a significant strain on our financial resources, divert the attention of management from our core business, harm our reputation and adversely affect our ability to attract and retain customers, any of which could have a material adverse effect on our business, financial condition and operating results.

Although we maintain third-party product liability insurance coverage, it is possible that claims against us may exceed the coverage limits of our insurance policies. Even if any product liability loss is covered by an insurance policy, these policies typically have substantial deductibles for which we are responsible. Product liability claims in excess of applicable insurance coverage could have a material adverse effect on our business, financial condition and operating results. In addition, any product liability claim brought against us, with or without merit, could result in an increase of our product liability insurance premiums. Insurance coverage varies in cost and can be difficult to obtain, and we cannot guarantee that we will be able to obtain insurance coverage in the future on terms acceptable to us or at all. Our inability to obtain sufficient insurance coverage to protect again potential product liability claims could prevent or limit our commercialization of current products or products currently under development.

Risks Related to our Legal and Regulatory Environment

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

The medical device industry is regulated extensively by governmental authorities, principally the FDA and corresponding state regulatory agencies. The regulations are very complex and are subject to rapid change and varying interpretations. Regulatory restrictions or changes could limit our ability to carry on or expand our

operations or result in higher than anticipated costs or lower than anticipated sales. The FDA and other U.S. governmental agencies regulate numerous elements of our business, including:

- product design and development;
- pre-clinical and clinical testing and trials;
- product safety;
- establishment registration and product listing;
- labeling and storage;
- marketing, manufacturing, sales and distribution;
- pre-market clearance or approval;
- servicing and post-market surveillance;
- advertising and promotion; and
- recalls and field safety corrective actions.

Before we can market or sell a new regulated product or a significant modification to an existing product in the United States, we must obtain either clearance under Section 510(k) of the FDCA or approval of a PMA application from the FDA, unless an exemption from pre-market review applies. In the 510(k) clearance process, the FDA must determine that a proposed device is "substantially equivalent" to a device legally on the market, known as a "predicate" device, with respect to intended use, technology and safety and effectiveness, in order to clear the proposed device for marketing. Clinical data is sometimes required to support substantial equivalence. The PMA pathway requires an applicant to demonstrate the safety and effectiveness of the device based on extensive data. The PMA process is typically required for devices that are deemed to pose the greatest risk, such as life-sustaining, life-supporting or implantable devices. Products that are approved through a PMA application generally need FDA approval before they can be modified. Similarly, some modifications made to products cleared through a 510(k) may require a new 510(k). The process of obtaining regulatory clearances or approvals to market a medical device can be costly and time-consuming, and we may not be able to obtain these clearances or approvals on a timely basis, or at all for our proposed products.

We received pre-market clearance for t:slim under Section 510(k) of the FDCA in November 2011. We obtained 510(k) clearance for t:connect in February 2013. From time to time, we make modifications to these products that may require a new 510(k). If the FDA requires us to go through a more rigorous examination for future products or modifications to existing products than we had expected, our product introductions or modifications could be delayed or canceled, which could cause our sales to decline or to not increase in line with our forecasts. In addition, the FDA may determine that future products will require the more costly, lengthy and uncertain PMA process.

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

- we may not be able to demonstrate that our products are safe and effective for their intended users;
- the data from our clinical trials may be insufficient to support clearance or approval; and
- the manufacturing process or facilities we use may not meet applicable requirements.

In addition, the FDA may change its clearance and approval policies, adopt additional regulations or revise existing regulations, or take other actions which may prevent or delay approval or clearance of our products under development or impact our ability to modify our currently cleared or approved products on a timely basis.

Any delay in, or failure to receive or maintain, clearance or approval for our products under development could prevent us from generating revenue from these products or achieving profitability. Additionally, the FDA and other regulatory authorities have broad enforcement powers. Regulatory enforcement or inquiries, or other increased scrutiny on us, could dissuade some customers from using our products and adversely affect our reputation and the perceived safety and efficacy of our products.

Failure to comply with applicable regulations could jeopardize our ability to sell our products and result in enforcement actions such as fines, civil penalties, injunctions, warning letters, recalls of products, delays in the introduction of products into the market, refusal of the FDA or other regulators to grant future clearances or approvals, and the suspension or withdrawal of existing approvals by the FDA or other regulators. Any of these sanctions could result in higher than anticipated costs or lower than anticipated sales and have a material adverse effect on our reputation, business, financial condition and operating results.

Furthermore, we may evaluate international expansion opportunities in the future. If we expand our operations outside of the United States, we will become subject to various additional regulatory and legal requirements under the applicable laws and regulations of the international markets we enter. These additional regulatory requirements may involve significant costs and expenditures and, if we are not able comply any such requirements, our international expansion and business could be significantly harmed.

Modifications to our products may require new 510(k) clearances or pre-market approvals, or may require us to cease marketing or recall the modified products until clearances are obtained.

Any modification to a 510(k)-cleared device that could significantly affect its safety or effectiveness, or that would constitute a major change in its intended use, design, or manufacture, requires a new 510(k) clearance or, possibly, a PMA. The FDA requires every manufacturer to make this determination in the first instance, but the FDA may review any manufacturer's decision. The FDA may not agree with our decisions regarding whether new clearances or approvals are necessary for changes that we have made to our products. If the FDA disagrees with our determination and requires us to submit new 510(k) notifications or PMAs for modifications to our previously cleared or approved products for which we previously concluded that new clearances or approvals were not necessary, we may be required to cease marketing or to recall the modified product until we obtain clearance or approval, and we may be subject to significant regulatory fines or penalties.

Furthermore, the FDA's ongoing review of the 510(k) program may make it more difficult for us to modify our previously cleared products, either by imposing stricter requirements on when a new 510(k) for a modification to a previously cleared product must be submitted, or applying more onerous review criteria to such submissions.

If we or our third-party suppliers fail to comply with the FDA's good manufacturing practice regulations, this could impair our ability to market our products in a cost-effective and timely manner.

We and our third-party suppliers are required to comply with the FDA's Quality System Regulation, or QSR, which covers the methods and documentation of the design, testing, production, control, quality assurance, labeling, packaging, sterilization, storage and shipping of our products. The FDA audits compliance with the QSR through periodic announced and unannounced inspections of manufacturing and other facilities. The FDA may impose inspections or audits at any time. If we or our suppliers have significant non-compliance issues or if any corrective action plan that we or our suppliers propose in response to observed deficiencies is not sufficient, the FDA could take enforcement action against us. Any of the foregoing actions could have a material adverse effect on our reputation, business, financial condition and operating results.

A recall of our products, or the discovery of serious safety issues with our products, could have a significant negative impact on us.

The FDA has the authority to require the recall of commercialized products in the event of material deficiencies or defects in design or manufacture or in the event that a product poses an unacceptable risk to health. Manufacturers may, under their own initiative, recall a product if any material deficiency in a device is found. A government-mandated or voluntary recall by us or one of our distributors could occur as a result of an unacceptable risk to health, component failures, manufacturing errors, design or labeling defects or other deficiencies and issues. Recalls of any of our products would divert managerial and financial resources and have an adverse effect on our reputation, financial condition and operating results, which could impair our ability to produce our products in a cost-effective and timely manner.

Further, under the FDA's medical device reporting, or MDR, regulations, we are required to report to the FDA any incident in which our product may have caused or contributed to a death or serious injury or in which our product malfunctioned and, if the malfunction were to recur, would likely cause or contribute to death or serious injury. Repeated product malfunctions may result in a voluntary or involuntary product recall, which could divert managerial and financial resources, impair our ability to manufacture our products in a cost-effective and timely manner and have an adverse effect on our reputation, financial condition and operating results.

In January 2014, we implemented a voluntary recall of select lots of cartridges used with the t:slim that may be at risk of leaking. A cartridge leak could potentially result in the delivery of too much or too little insulin, which could lead to unexpected high or low blood glucose levels. Too much insulin can result in severe low blood sugar, or hypoglycemia, and too little insulin can lead to severe high blood sugar, or hyperglycemia, both of which can lead to serious injury or death. We notified the FDA of the recall and also notified our customers and any of our independent distributors that may have received affected cartridges. We have also filed multiple MDRs with the FDA following the recall and we expect to file additional MDRs in the future as we collect additional information.

Any adverse event involving our products could result in future voluntary corrective actions, such as recalls or customer notifications, or regulatory agency action, which could include inspection, mandatory recall or other enforcement action. Any corrective action, whether voluntary or involuntary, will require the dedication of our time and capital, distract management from operating our business and may harm our reputation and financial results.

Our failure to comply with U.S. federal and state fraud and abuse laws, including anti-kickback laws and other U.S. federal and state anti-referral laws, could have a material, adverse impact on our business.

There are numerous U.S. federal and state laws pertaining to healthcare fraud and abuse, including anti-kickback laws and physician self-referral laws. Our relationships with healthcare providers and other third-parties are subject to scrutiny under these laws. Violations of these laws are punishable by criminal and civil sanctions, including, in some instances, imprisonment and exclusion from participation in federal and state healthcare programs, including the Medicare, Medicaid and Veterans Administration health programs.

Healthcare fraud and abuse regulations are complex, and even minor irregularities can potentially give rise to claims that a statute or prohibition has been violated. The laws that may affect our ability to operate include:

- the federal healthcare programs' Anti-Kickback Law, which prohibits, among other things, persons from knowingly and willfully soliciting, receiving, offering or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual for, or the purchase, order or recommendation of, any good or service for which payment may be made under federal healthcare programs such as the Medicare and Medicaid programs;
- federal false claims laws which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid, or other third-party payors that are false or fraudulent;
- the federal HIPAA of 1996, which created federal criminal laws that prohibit executing a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters;
- the Federal Trade Commission Act and similar laws regulating advertisement and consumer protections; and
- foreign and U.S. state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws which may apply to items or services reimbursed by any third-party payor, including commercial insurers.

Further, the recently enacted Patient Protection and Affordable Care Act, as amended by the Healthcare and Education Affordability Reconciliation Act, or, collectively, the PPACA, among other things, amends the intent requirement of the federal anti-kickback and criminal healthcare fraud statutes. A person or entity can now be found guilty under the PPACA without actual knowledge of the statute or specific intent to violate it. In addition, the PPACA provides that the government may assert that a claim including items or services resulting from a violation

of the federal anti-kickback statute constitutes a false or fraudulent claim for purposes of the false claims statutes. Possible sanctions for violation of these anti-kickback laws include monetary fines, civil and criminal penalties, exclusion from Medicare and Medicaid programs and forfeiture of amounts collected in violation of those prohibitions. Any violations of these laws, or any action against us for violation of these laws, even if we successfully defend against it, could result in a material adverse effect on our reputation, business, financial condition and operating results.

To enforce compliance with the federal laws, the U.S. Department of Justice, or DOJ, has recently increased its scrutiny of interactions between healthcare companies and healthcare providers, which has led to a number of investigations, prosecutions, convictions and settlements in the healthcare industry. Dealing with investigations can be time- and resource-consuming and can divert management's attention from our core business. Additionally, if a healthcare company settles an investigation with the DOJ or other law enforcement agencies, we may be forced to agree to additional onerous compliance and reporting requirements as part of a consent decree or corporate integrity agreement. Any such investigation or settlement could increase our costs or otherwise have an adverse effect on our business.

The scope and enforcement of these laws is uncertain and subject to rapid change in the current environment of healthcare reform, especially in light of the lack of applicable precedent and regulations. Federal or state regulatory authorities might challenge our current or future activities under these laws. Any of these challenges could have a material adverse effect on our reputation, business, financial condition and operating results. Any state or federal regulatory review of us, regardless of the outcome, would be costly and time-consuming. Additionally, we cannot predict the impact of any changes in these laws, whether or not retroactive.

We may be liable if we engage in the off-label promotion of our products.

Our promotional materials and training methods must comply with FDA and other applicable laws and regulations, including the prohibition of the promotion of the off-label use of our products. Healthcare providers may use our products off-label, as the FDA does not restrict or regulate a physician's choice of treatment within the practice of medicine. However, if the FDA determines that our promotional materials or training constitutes promotion of an off-label use, it could request that we modify our training or promotional materials or subject us to regulatory or enforcement actions, including the issuance of an untitled letter, a warning letter, injunction, seizure, civil fine and criminal penalties. It is also possible that other federal, state or foreign enforcement authorities might take action if they consider our promotional or training materials to constitute promotion of an unapproved use, which could result in significant fines or penalties. Although our policy is to refrain from statements that could be considered off-label promotion of our products, the FDA or another regulatory agency could disagree and conclude that we have engaged in off-label promotion. In addition, the off-label use of our products may increase the risk of product liability claims. Product liability claims are expensive to defend and could result in substantial damage awards against us and harm our reputation.

Legislative or regulatory healthcare reforms may make it more difficult and costly for us to obtain regulatory clearance or approval of our products.

Recent political, economic and regulatory influences are subjecting the healthcare industry to fundamental changes. The sales of our products depend in part on the availability of coverage and reimbursement from third-party payors such as government health administration authorities, private health insurers, health maintenance organizations and other healthcare-related organizations. Both the Federal and state governments in the United States continue to propose and pass new legislation and regulations designed to contain or reduce the cost of healthcare. This legislation and regulation may result in decreased reimbursement for medical devices, which may further exacerbate industry-wide pressure to reduce the prices charged for medical devices. This could harm our ability to market our products and generate sales.

In addition, FDA regulations and guidance are often revised or reinterpreted by the FDA in ways that may significantly affect our business and our products. Any new regulations or revisions or reinterpretations of existing regulations may impose additional costs or lengthen review times of our products. Delays in receipt of or failure to receive regulatory clearances or approvals for our proposed products would have a material adverse effect on our business, financial condition and operating results.

Federal and state governments in the United States have recently enacted legislation to overhaul the nation's healthcare system. While the goal of healthcare reform is to expand coverage to more individuals, it also involves increased government price controls, additional regulatory mandates and other measures designed to constrain medical costs. The PPACA substantially changes the way healthcare is financed by both governmental and private insurers, encourages improvements in the quality of healthcare items and services and significantly impacts the medical device industries. Among other things, the PPACA:

- establishes a new Patient-Centered Outcomes Research Institute to oversee, identify priorities in and conduct comparative clinical effectiveness research;
- implements payment system reforms including a national pilot program on payment bundling to encourage hospitals, physicians and other providers to improve the coordination, quality and efficiency of certain healthcare services through bundled payment models; and
- creates an independent payment advisory board that will submit recommendations to reduce Medicare spending if projected Medicare spending exceeds a specified growth rate.

In addition, other legislative changes have been proposed and adopted since the PPACA was enacted. Most recently, on August 2, 2011, the President signed into law the Budget Control Act of 2011, which, among other things, creates the Joint Select Committee on Deficit Reduction to recommend to Congress proposals in spending reductions. The Joint Select Committee did not achieve a targeted deficit reduction of at least $1.2 trillion for the years 2013 through 2021, triggering the legislation's automatic reduction to several government programs. This includes aggregate reductions to Medicare payments to providers of up to 2% per fiscal year which commenced in 2013. The uncertainties regarding the ultimate features of the PPACA and other healthcare reform initiatives and their enactment and implementation may have an adverse effect on our customers' purchasing decisions regarding our products. In the coming years, additional changes could be made to governmental healthcare programs that could significantly impact the success of our products. Cost control initiatives could decrease the price that we receive for our products. At this time, we cannot predict which, if any, additional healthcare reform proposals will be adopted, when they may be adopted or what impact they, or the PPACA, may have on our business and operations, and any of these impacts may be adverse on our operating results and financial condition.

Our financial performance may be adversely affected by medical device tax provisions in the healthcare reform laws.

The PPACA imposes, among other things, an annual excise tax of 2.3% on any entity that manufactures or imports medical devices offered for sale in the United States beginning in 2013. Under these provisions, the Congressional Research Service predicts that the total cost to the medical device industry may be up to $20 billion over the next decade. We do not believe that t:slim is currently subject to this tax based on the retail exemption under applicable Treasury Regulations. However, the availability of this exemption is subject to interpretation by the IRS, and the IRS may disagree with our analysis. In addition, future products that we manufacture, produce or import may be subject to this tax. The financial impact this tax may have on our business is unclear and there can be no assurance that our business will not be materially adversely affected by it.

Risks Related to our Common Stock

Because of their significant stock ownership, certain of our executive officers, directors and principal stockholders will be able to exert control over us and our significant corporate decisions.*

Based on an aggregate of 22,978,219 shares of our common stock outstanding as of March 31, 2014, our executive officers and directors, and their affiliates owned, in the aggregate, over 50% of the voting power of our outstanding common stock. These persons, acting together, will have the ability to significantly influence or determine the outcome of all matters submitted to our stockholders for approval, including the election and removal of directors and any merger, consolidation, or sale of all or substantially all of our assets.

The interests of the aforementioned stockholders might not coincide with the interests of the other holders of our capital stock. This concentration of ownership may reduce the value of our common stock by, among other things:

- delaying, deferring or preventing a change in control of our company;
- impeding a merger, consolidation, takeover or other business combination involving our company; or
- causing us to enter into transactions or agreements that are not in the best interests of all stockholders.

Anti-takeover provisions in our organizational documents and Delaware law may discourage or prevent a change of control, even if an acquisition would be beneficial to our stockholders, which could reduce our stock price and prevent our stockholders from replacing or removing our current management.

Our amended and restated certificate of incorporation and bylaws contain provisions that could delay or prevent a change of control of our company or changes in our board of directors that our stockholders might consider favorable. Some of these provisions:

- authorize the issuance of preferred stock with powers, preferences and rights that may be senior to our common stock, which can be created and issued by the board of directors without prior stockholder approval;
- provide for the adoption of a staggered board of directors whereby the board is divided into three classes each of which has a different three-year term;
- provide that the number of directors shall be fixed by the board;
- prohibit our stockholders from filling board vacancies;
- provide for the removal of a director only with cause and then by the affirmative vote of the holders of a majority of the outstanding shares;
- prohibit stockholders from calling special stockholder meetings;
- prohibit stockholders from acting by written consent without holding a meeting of stockholders;
- require the vote of at least two-thirds of the outstanding shares to approve amendments to the certificate of incorporation or bylaws; and
- require advance written notice of stockholder proposals and director nominations.

We are subject to the provisions of Section 203 of the Delaware General Corporation Law, which may prohibit certain business combinations with stockholders owning 15% or more of our outstanding voting stock. These and other provisions in our amended and restated certificate of incorporation, bylaws and Delaware law could make it more difficult for stockholders or potential acquirers to obtain control of our board of directors or initiate actions that are opposed by our then-current board of directors, including a merger, tender offer or proxy contest involving our company. Any delay or prevention of a change of control transaction or changes in our board of directors could cause the market price of our common stock to decline.

Our board of directors is authorized to issue and designate shares of our preferred stock in additional series without stockholder approval.

Our amended and restated certificate of incorporation authorizes our board of directors, without the approval of our stockholders, to issue 5,000,000 shares of our preferred stock, subject to limitations prescribed by applicable law, rules and regulations and the provisions of our amended and restated certificate of incorporation, as shares of preferred stock in series, and to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof. The powers, preferences and rights of these additional series of preferred stock may be senior to or on parity with our common stock, and the issuance of such shares in the future may reduce the value of our common stock.

Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited.*

As of December 31, 2013, we have federal net operating loss, or NOL, carryforwards of approximately $119.7 million. In general, if there is an "ownership change" with respect to our company, as defined under Section 382 of the Internal Revenue Code of 1986, as amended, which we refer to as the Code, the utilization of our NOL carryforwards may be subject to substantial limitations imposed by the Code, and similar state provisions. In general, an ownership change occurs whenever there is a shift in ownership of our company by more than 50% by one or more 5% stockholders over a specified time period. We updated our Section 382/383 analysis, from January 1, 2012 through December 31, 2013, regarding the limitation of the net operating losses and research and development credits. Based upon the analysis, we determined that no ownership changes occurred during that period. However, previous analysis determined that ownership changes have occurred in years prior to 2012, but will not have a material impact on the future utilization of such carryforwards. We may also experience ownership changes in the future as a result of subsequent shifts in our stock ownership. Accordingly, if we earn net taxable income, our ability to use net operating loss carryforwards to offset U.S. federal taxable income may become subject to limitations, which could potentially result in increases in our future tax liabilities.

We do not intend to pay cash dividends.

We have never declared or paid cash dividends on our capital stock. We currently intend to retain all available funds and any future earnings for use in the operation and expansion of our business and do not anticipate paying any cash dividends in the foreseeable future. In addition, pursuant to the term loan agreement with Capital Royalty Partners, we are precluded from paying any cash dividends. Accordingly, you may have to sell some or all of your shares of our common stock in order to generate cash flow from your investment. You may not receive a gain on your investment when you sell shares and you may lose the entire amount of the investment.

The requirements of being a public company will increase our costs and may strain our resources and divert management's attention.

As a public company, we are subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, the Dodd-Frank Wall Street Reform and Consumer Protection Act, or the Dodd-Frank Act, the listing requirements of The NASDAQ Stock Market and other applicable securities rules and regulations. Compliance with these rules and regulations has increased and will continue to increase our legal and financial compliance costs, make some activities more difficult, time-consuming or costly, and increase demand on our systems and resources.

The Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. Recent legislation permits "emerging growth companies" to implement many of these requirements over a longer period and up to five years from the end of our last fiscal year. We intend to take advantage of this new legislation but cannot guarantee that we will not be required to implement these requirements sooner than budgeted or planned and thereby incur unexpected expenses.

In order to maintain and, if required, improve our disclosure controls and procedures and internal control over financial reporting to meet this standard, significant resources and management oversight may be required. As a result, management's attention may be diverted from other business concerns, which could harm our business and operating results. Although we have hired additional employees to help us comply with these requirements, in the future we may need to hire more employees or utilize external consultants in order to further support our efforts, which will increase our expenses.

In addition, changing laws, regulations and standards relating to corporate governance and public disclosure, as well as an increase in stockholder activism, are creating uncertainty for public companies, increasing legal and financial compliance costs and making some activities more time consuming. New or changing laws, regulations and standards in particular are subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and

higher costs necessitated by ongoing revisions to disclosure and governance practices. We intend to invest resources to comply with evolving laws, regulations and standards, and this investment may result in increased general and administrative expenses and a diversion of management's time and attention from revenue-generating activities to compliance activities. If our efforts to comply with new or evolving laws, regulations and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to practice, regulatory authorities may initiate legal proceedings against us and our business may be harmed.

Moreover, as a public company that is subject to these rules and regulations, we may find it more difficult and more expensive for us to obtain certain types of insurance, and in particular director and officer liability insurance. We may be required to incur substantial costs to maintain our current levels of such coverage on acceptable terms.

We are an "emerging growth company" and we do not know whether the reduced disclosure requirements and relief from certain other significant obligations that are applicable to emerging growth companies will make our common stock less attractive to investors.

We are an "emerging growth company," as defined in the Jumpstart our Business Startups Act of 2012, or the JOBS Act, and we intend to take advantage of certain exemptions from various reporting requirements that apply to other public companies that are not "emerging growth companies." These exemptions include the following:

- not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act;
- less extensive disclosure obligations regarding executive compensation in our periodic reports and proxy statements; and
- exemptions from the requirements to hold a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

We intend to take advantage of these exemptions but cannot guarantee that we will not be required to implement these requirements sooner than budgeted or planned and thereby incur unexpected expenses. We cannot predict if investors will find our common stock less attractive because we will rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock, which could result in a reduction in the price of our common stock.

Pursuant to the JOBS Act, our independent registered public accounting firm will not be required to attest to the effectiveness of our internal control over financial reporting for so long as we are an "emerging growth company."

Under existing SEC rules and regulations, we will be required to disclose changes made in our internal control over financial reporting on a quarterly basis and management will be required to assess the effectiveness of our controls annually. However, under the JOBS Act, our independent registered public accounting firm will not be required to attest to the effectiveness of our internal control over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 until we are no longer an "emerging growth company." We could be an "emerging growth company" for up to five years.

If we fail to maintain an effective system of internal control over financial reporting, we may not be able to accurately report our financial results or prevent fraud. As a result, stockholders could lose confidence in our financial and other public reporting, which would harm our business and the trading price of our common stock.*

Effective internal controls over financial reporting are necessary for us to provide reliable financial reports and, together with adequate disclosure controls and procedures, are designed to prevent fraud. Any failure to implement required new or improved controls, or difficulties encountered in their implementation could cause us to fail to meet our reporting obligations. In addition, any testing by us conducted in connection with Section 404(a) of the Sarbanes-Oxley Act, or the subsequent testing by our independent registered public accounting firm conducted in connection with Section 404(b) of the Sarbanes-Oxley Act after we no longer qualify as an "emerging growth company," may reveal deficiencies in our internal controls over financial reporting that are deemed to be material

weaknesses or that may require prospective or retroactive changes to our consolidated financial statements or identify other areas for further attention or improvement. Inferior internal controls could also cause investors to lose confidence in our reported financial information, which could have a negative effect on the trading price of our common stock.

We are required to disclose changes made in our internal control procedures on a quarterly basis and our management is required to assess the effectiveness of these controls annually. However, for as long as we are an "emerging growth company" under the recently enacted JOBS Act, our independent registered public accounting firm will not be required to attest to the effectiveness of our internal control over financial reporting pursuant to Section 404. We could be an "emerging growth company" for up to five years. An independent assessment of the effectiveness of our internal controls could detect problems that our management's assessment might not. Undetected material weaknesses in our internal controls could lead to financial statement restatements and require us to incur the expense of remediation.

The price of our common stock might fluctuate significantly.

Prior to our recently completed initial public offering, there was no public market for our common stock. The trading price of our common stock is likely to be volatile for the foreseeable future. Our stock price could be subject to wide fluctuations in response to a variety of factors, including the following:

- actual or anticipated fluctuations in our quarterly financial and operating results;
- perceptions about the market acceptance of our products and the recognition of our brand;
- overall performance of the equity markets;
- introduction of proposed products, or announcements of significant contracts, licenses or acquisitions, by us or our competitors;
- legislative, political or regulatory developments;
- issuance of securities analysts' reports or recommendations;
- additions or departures of key personnel;
- threatened or actual litigation and government investigations;
- sale of shares of our common stock by us or members of our management; and
- general economic conditions.

These and other factors might cause the market price of our common stock to fluctuate substantially, which may negatively affect the liquidity of our common stock. In addition, in recent years, the stock market has experienced significant price and volume fluctuations. This volatility has had a significant impact on the market price of securities issued by many companies across many industries. The changes frequently appear to occur without regard to the operating performance of the affected companies. Accordingly, the price of our common stock could fluctuate based upon factors that have little or nothing to do with our company, and these fluctuations could materially reduce our share price.

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

Future sales, or the perception of future sales, of shares of our common stock could materially reduce the market price of our common stock.*

Sales of our common stock, or the perception in the market that the holders of a large number of our shares intend to sell such shares, could reduce the market price of our common stock which would impair our ability to raise future capital through the sale of additional equity securities. We have outstanding 22,978,219 shares of

common stock as of March 31, 2014, of which approximately 13,708,942 shares are restricted securities that may be sold only in accordance with the resale restrictions under Rule 144 of the Securities Act of 1933, as amended. In addition, as of March 31, 2014, we had outstanding options to purchase 4,994,340 shares of common stock and warrants to purchase 1,297,057 shares of common stock that, if exercised, will result in these additional shares becoming available for sale. As of March 31, 2014, there are also an aggregate of 3,043,238 shares of our common stock reserved for future grant or issuance under our 2013 Equity Incentive Plan and Employee Stock Purchase Plan.

Certain holders of shares of common stock will have the right, subject to various conditions and limitations, to include their shares in registration statements relating to our securities. In addition, these holders are entitled to piggyback registration rights with respect to the registration under the Securities Act of shares of our common stock. Shares of common stock sold under these registration statements can be freely sold in the public market. In the event registration rights are exercised and a large number of shares of common stock are sold in the public market, those sales could reduce the trading price of our common stock.

In the future, we also may issue our securities if we need to raise additional capital. The number of new shares of our common stock issued in connection with raising additional capital could constitute a material portion of the then-outstanding shares of our common stock.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

Recent Sales of Unregistered Securities

None.

Use of Proceeds

Our initial public offering of common stock was effected through a Registration Statement on Form S-1 (File No. 333-191601) which was declared effective by the SEC on November 13, 2013. On November 14, 2013, additional shares of our common stock were registered through a Registration Statement on Form S-1 (File No. 333-192324) filed pursuant to Rule 462(b) under the Securities Act. On November 19, 2013, a total of 8,000,000 shares of common stock were sold on our behalf at the initial public offering price of $15.00 per share, for aggregate gross offering proceeds of $120.0 million, managed by BofA Merrill Lynch and Piper Jaffray. In addition, on November 15, 2013, in connection with the exercise of the underwriters' over-allotment option, 1,200,000 additional shares of common stock were sold on our behalf at the initial public offering price of $15.00 per share, for aggregate gross offering proceeds of $18 million. We paid to the underwriters underwriting discounts totaling approximately $9.7 million in connection with the offering. In addition, we incurred additional costs of approximately $3.3 million in connection with the offering, which when added to the underwriting discounts paid by us, amounts to total costs of approximately $13.0 million. As a result, the net offering proceeds to us, after deducting underwriting discounts and offering expenses, were approximately $125.0 million. No offering expenses were paid directly or indirectly to any of our directors or officers (or their associates) or persons owning ten percent or more of any class of our equity securities or to any other affiliates.

The net proceeds from the offering have been invested in money market funds and highly-liquid, highly-rated securities. We also estimate that we had used approximately $23 million to expand and support our sales and marketing infrastructure, approximately $6 million to fund research and development activities, and approximately $11 million to expand and support our manufacturing capabilities. We intend to use the remainder of the net proceeds from the IPO for working capital expenditures and other general corporate purposes, including costs and expenses associated with being a public company. The amounts and timing of our actual use of proceeds will vary depending on numerous factors, including the factors described under the "Risk Factors". As a result, management will retain broad discretion over the allocation of the net proceeds from this offering, and investors will be relying on the judgment of our management regarding the application of the net proceeds.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits

Exhibit Footnote	Exhibit Number	Description of Document
(1)	3.1	Amended and Restated Certificate of Incorporation as currently in effect.
(1)	3.2	Amended and Restated Bylaws as currently in effect.
†	10.1	Amended and Restated Term Loan Agreement, dated as of April 4, 2014.
†	10.2	Term Loan Agreement, dated as of April 4, 2014.
	31.1	Certification of Kim D. Blickenstaff, Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
	31.2	Certification of John Cajigas, Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
*	32.1	Certification of Kim D. Blickenstaff, Chief Executive Officer, pursuant to U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
*	32.2	Certification of John Cajigas, Chief Financial Officer, pursuant to U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
**	101.INS	XBRL Instance Document.
**	101.SCH	XBRL Taxonomy Extension Schema Document.
**	101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.
**	101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.
**	101.LAB	XBRL Taxonomy Extension Label Linkbase Document.
**	101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.

† Registrant has omitted portions of the referenced exhibit pursuant to a request for confidential treatment under Rule 406 promulgated under the Securities Act.

(1) Filed as an exhibit to the registrant's Registration Statement on Form S-1 (File No. 333-191601) and incorporated herein by reference.

* This certification is not deemed "filed" for purposes of Section 18 of the Securities Exchange Act, or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934, except to the extent that the registrant specifically incorporates it by reference.

** Pursuant to applicable securities laws and regulations, we are deemed to have complied with the reporting obligation relating to the submission of interactive data files in such exhibits and are not subject to liability under any anti-fraud provisions of the federal securities laws as long as we have made a good faith attempt to comply with the submission requirements and promptly amend the interactive data files after becoming aware that the interactive data files fail to comply with the submission requirements. Users of this data are advised that, pursuant to Rule 460T under the Securities Act of 1933, as amended, these interactive data files are deemed not "filed" and not otherwise subject to liability.

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.

Tandem Diabetes Care, Inc.

Dated: May 6, 2014

By: /s/ Kim D. Blickenstaff
Kim D. Blickenstaff
President, Chief Executive Officer and Director
(on behalf of the registrant and as the registrant's Principal Executive Officer)

By: /s/ John Cajigas
John Cajigas
Chief Financial Officer and Treasurer
(on behalf of the registrant and as the registrant's Principal Financial and Accounting Officer)

AMENDED AND RESTATED TERM LOAN AGREEMENT

dated as of

April 4, 2014

between

TANDEM DIABETES CARE, INC.
as Borrower,

The SUBSIDIARY GUARANTORS from Time to Time Party Hereto,

and

The LENDERS from Time to Time Party Hereto,

U.S. $30,000,000

[***]: CONFIDENTIAL PORTIONS OMITTED AND FILED SEPARATELY WITH THE COMMISSION.

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SCHEDULES AND EXHIBITS

AMENDED AND RESTATED TERM LOAN AGREEMENT, dated as of April 4, 2014, among TANDEM DIABETES CARE, INC., a Delaware corporation ("***Borrower***"), the SUBSIDIARY GUARANTORS from time to time party hereto and the Lenders from time to time party hereto.

RECITALS

The Borrower and the Lenders have entered into that certain Term Loan Agreement, dated as of December 24, 2012 (the "***Existing Term Loan Agreement***"), pursuant to which the Lenders have extended certain term loans in the principal amount of $30,000,000 (the "***Existing Term Loans***") to the Borrower on January 14, 2013 (the "***Prior Closing Date***").

The Borrower has requested that the Lenders extend or continue to extend credit in the form of term loans to the Borrower in an aggregate principal amount of up to $30,000,000. The Borrower has also requested that the Lenders extend credit in the form of a new tranche of term loans to the Borrower in an aggregate principal amount of up to $30,000,000.

To effect such extensions of credit, the parties have agreed to (i) amend and restate the Existing Term Loan Agreement in its entirety to make certain changes as more fully set forth herein, which amendment and restatement shall become effective on the Closing Date, and (ii) enter into a separate new term loan agreement (the "***New Tranche Term Loan Agreement***") on the Closing Date with a loan commitment for term loans of up to $30,000,000 in aggregate principal amount.

Accordingly, the parties agree as follows:

SECTION 1
DEFINITIONS

1.01 Certain Defined Terms. As used herein, the following terms have the following respective meanings:

"***Accounting Change Notice***" has the meaning set forth in **Section 1.04(a)**.

"***Act***" has the meaning set forth in **Section 12.17**.

"***Acquisition***" means any transaction, or any series of related transactions, by which any Person directly or indirectly, by means of a take-over bid, tender offer, amalgamation, merger, purchase of assets, or similar transaction having the same effect as any of the foregoing, (a) acquires any business or all or substantially all of the assets of any Person engaged in any business, (b) acquires control of securities of a Person engaged in a business representing more than 50% of the ordinary voting power for the election of directors or other governing body if the business affairs of such Person are managed by a board of directors or other governing body, or (c) acquires control of more than 50% of the ownership interest in any Person engaged in any business that is not managed by a board of directors or other governing body.

"***Affected Lender***" has the meaning set forth in **Section 2.07(a)**.

"***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.

"***Agreement***" means the Existing Term Loan Agreement, together with all schedules and exhibits thereto, as amended and restated by this Amended and Restated Term Loan Agreement, including the schedules and exhibits hereto, as the same may be from time to time further modified, amended, restated, amended and restated and/or supplemented; provided, however, that after the Closing Date, "Agreement" shall mean this Amended and Restated Term Loan Agreement, including the schedules and exhibits hereto, as the same may be from time to time further modified, amended, restated, amended and restated and/or supplemented.

"***Asset Sale***" is defined in **Section 9.09**.

"***Asset Sale Net Proceeds***" means the aggregate amount of the cash proceeds received from any Asset Sale, net of any bona fide costs incurred in connection with such Asset Sale, plus, with respect to any non-cash proceeds of an Asset Sale, the fair market value of such non cash proceeds as determined by the Majority Lenders, acting reasonably.

"***Assignment and Acceptance***" means an assignment and acceptance entered into by a Lender and an assignee of such Lender.

"***Bankruptcy Code***" means Title II of the United States Code entitled "Bankruptcy."

"***Benefit Plan***" means any employee benefit plan as defined in Section 3(3) of ERISA (whether governed by the laws of the United States or otherwise) to which any Obligor or Subsidiary thereof incurs or otherwise has any obligation or liability, contingent or otherwise.

"***Borrower***" has the meaning set forth in the introduction hereto.

"***Borrower Facility***" means the premises located at 11025, 11035, 11045, 11065 and 11075 Roselle Street, San Diego, CA 92121, which are leased by Borrower pursuant to the Borrower Leases.

"***Borrower Landlord***" means ARE-11025/11075 Roselle Street, LLC.

"***Borrower Lease***" means (a) the Lease Agreement dated March 7, 2012, by and between Borrower and ARE-11025/11075 Roselle Street, LLC, as amended by (i) the First Amendment to the Lease Agreement dated April 24, 2012, by and between Borrower and ARE-11025/11075 Roselle Street, LLC, (ii) the Second Amendment to the Lease Agreement dated July 31, 2012, by and between Borrower and ARE-11025/11075 Roselle Street, LLC, and (iii) the Third Amendment to the Lease Agreement dated November 5, 2013, by and between Borrower and ARE-11025/11075 Roselle Street, LLC; and (b) the Lease Agreement dated November 5, 2013, by and between Borrower and ARE-11025/11075 Roselle Street, LLC.

"***Borrower Party***" has the meaning set forth in **Section 12.03(b)**.

"***Borrowing***" means a borrowing consisting of Loans made on the same day by the

Lenders according to their respective Commitments (including without limitation a borrowing of a PIK Loan).

"***Borrowing Date***" means the date of each Borrowing.

"***Business Day***" means a day (other than a Saturday or Sunday) on which commercial banks are not authorized or required to close in New York City.

"***Capital Lease Obligations***" means, as to any Person, the obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) real and/or personal Property which obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

"***Capital Royalty Intercreditor Agreement***" means that certain intercreditor agreement, dated as of the date hereof, between the lenders under the New Tranche Term Loan Agreement and the Lenders hereto.

"***Change of Control***" means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group of Persons acting jointly or otherwise in concert, of capital stock representing more than 30% of the aggregate ordinary voting power represented by the issued and outstanding capital stock of the Borrower, (b) during any period of twelve (12) consecutive calendar months, the occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were neither (i) nominated by the board of directors of the Borrower, nor (ii) appointed by directors so nominated, or (c) the acquisition of direct or indirect Control of the Borrower by any Person or group of Persons acting jointly or otherwise in concert; in each case whether as a result of a tender or exchange offer, open market purchases, privately negotiated purchases or otherwise; provided, however, that no Change of Control shall be deemed to occur as the result of any of the foregoing occurrences if after such occurrence, the Existing Shareholder Group collectively owns, directly or indirectly, beneficially or of record, capital stock representing more than 30% of the aggregate ordinary voting power represented by the issued and outstanding capital stock of Borrower.

"***Claims***" includes claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions, informations (brought by a public prosecutor without grand jury indictment) or other similar processes, assessments or reassessments.

"***Closing Date***" means April 4, 2014, the effective date of this Amended and Restated Term Loan Agreement.

"***Code***" means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

"***Collateral***" means the collateral provided for in the Security Documents.

"***Collateral Access Agreement***" means a collateral access agreement with respect to Borrower Facility executed by Borrower Landlord in form and substance satisfactory to Majority Lenders.

"***Commitment***" means, with respect to each Lender, the obligation of such Lender to make Loans to the Borrower in accordance with the terms and conditions of this Agreement, which commitment is in the amount set forth opposite such Lender's name on **Schedule 1** under the caption "Commitment", as such Schedule may be amended from time to time. The aggregate Commitments on the date hereof equal $30,000,000. For purposes of clarification, the amount of any PIK Loans shall not reduce the amount of the available Commitment.

"***Commodity Account***" is defined in the Security Agreement.

"***Compliance Certificate***" has the meaning given to such term in **Section 8.01(d)**.

"***Contracts***" means contracts, licenses, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements under which a Person has, or will have, any liability or contingent liability (in each case, whether written or oral, express or implied).

"***Control***" means, in respect of a particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"***Control Agent***" is defined in the Security Agreement.

"***Copyright***" is defined in the Security Agreement.

"***CRPC***" means Capital Royalty Partners II (Cayman) L.P.

"***CRPPF***" means Capital Royalty Partners II – Parallel Fund "A" L.P., a Delaware limited partnership.

"***CRPPFC***" means Capital Royalty Partners II – Parallel Fund "B" (Cayman) L.P.

"***Cure Amount***" has the meaning set forth in **Section 10.02(b)**.

"***Cure Right***" has the meaning set forth in **Section 10.02(a)**.

"***Default***" means any Event of Default and any event that, upon the giving of notice, the lapse of time or both, would constitute an Event of Default.

"***Defaulting Lender***" means, subject to **Section 2.06**, any Lender that (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans, within three (3) Business Days of the date required to be funded by it hereunder, (b) has notified the Borrower or any Lender that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under

other agreements in which it commits to extend credit, or (c) has, or has a direct or indirect parent company that has, (i) become the subject of an Insolvency Proceeding, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; 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.

"***Deposit Account***" is defined in the Security Agreement.

"***Dollars***" and "***$***" means lawful money of the United States of America.

"***Domestic Subsidiary***" means any Subsidiary that is a corporation, limited liability company, partnership or similar business entity incorporated, formed or organized under the laws of the United States, any State of the United States or the District of Columbia.

"***Eligible Transferee***" means and includes a commercial bank, an insurance company, a finance company, a financial institution, any investment fund that invests in loans or any other "accredited investor" (as defined in Regulation D of the Securities Act) that is principally in the business of managing investments or holding assets for investment purposes; provided that "Eligible Transferee" shall not include any Person that is principally in the business of managing investments or holding assets for investment purposes that has a board participation right in a company that produces, markets or sells, or develops a program to market or sell, a marketed or Phase III product in competition with the Borrower.

"***Environmental Law***" means any federal, state, provincial or local governmental law, rule, regulation, order, writ, judgment, injunction or decree relating to pollution or protection of the environment or the treatment, storage, disposal, release, threatened release or handling of hazardous materials, and all local laws and regulations related to environmental matters and any specific agreements entered into with any competent authorities which include commitments related to environmental matters.

"***Equity Cure Right***" has the meaning set forth in **Section 10.02(a)(i)**.

"***Equity Interest***" shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or nonvoting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and 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 property of, such partnership, but excluding debt securities convertible or exchangeable into such equity.

"***Equivalent Amount***" means, with respect to an amount denominated in one currency, the amount in another currency that could be purchased by the amount in the first currency determined by reference to the Exchange Rate at the time of determination.

"***ERISA***" means the United States Employee Retirement Income Security Act of 1974, as amended.

"***ERISA Affiliate***" means, collectively, any Obligor, Subsidiary thereof, and any Person under common control, or treated as a single employer, with any Obligor or Subsidiary thereof, within the meaning of Section 414(b), (c), (m) or (o) of the Code.

"***ERISA Event***" means (i) a reportable event as defined in Section 4043 of ERISA with respect to a Title IV Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event; (ii) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Title IV Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following 30 days; (iii) a withdrawal by any Obligor or any ERISA Affiliate thereof from a Title IV Plan or the termination of any Title IV Plan resulting in liability under Sections 4063 or 4064 of ERISA; (iv) the withdrawal of any Obligor or any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by any Obligor or any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA; (v) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Title IV Plan or Multiemployer Plan; (vi) the imposition of liability on any Obligor or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the failure by any Obligor or any ERISA Affiliate thereof to make any required contribution to a Plan, or the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Title IV Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430 of the Code with respect to any Title IV Plan or the failure to make any required contribution to a Multiemployer Plan; (viii) the determination that any Title IV Plan is considered an at-risk plan or a plan in endangered to critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (ix) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan; (x) the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Obligor or any ERISA Affiliate thereof; (xi) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Title IV Plan; (xii) the occurrence of a non-exempt prohibited transaction under Sections 406 or 407 of ERISA for which any Obligor or any Subsidiary thereof may be directly or indirectly liable; (xiii) a violation of the applicable requirements of Section 404 or 405 of ERISA or the exclusive benefit rule under Section 401(a) of the Code by any fiduciary or disqualified person for which any Obligor or any ERISA Affiliate thereof may be directly or indirectly liable; (xiv) the occurrence of an act or omission which could give rise to the imposition on any Obligor or any ERISA Affiliate thereof of fines, penalties, taxes or related charges under Chapter 43 of the Code or

under Sections 409, 502(c), (i) or (1) or 4071 of ERISA; (xv) the assertion of a material claim (other than routine claims for benefits) against any Plan or the assets thereof, or against any Obligor or any Subsidiary thereof in connection with any such plan; (xvi) receipt from the IRS of notice of the failure of any Qualified Plan to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Qualified Plan to fail to qualify for exemption from taxation under Section 501(a) of the Code; (xvii) the imposition of any lien (or the fulfillment of the conditions for the imposition of any lien) on any of the rights, properties or assets of any Obligor or any ERISA Affiliate thereof, in either case pursuant to Title I or IV, including Section 302(f) or 303(k) of ERISA or to Section 401(a)(29) or 430(k) of the Code; or (xviii) the establishment or amendment by any Obligor or any Subsidiary thereof of any "welfare plan", as such term is defined in Section 3(1) of ERISA, that provides post-employment welfare benefits in a manner that would increase the liability of any Obligor.

"***Event of Default***" has the meaning set forth in **Section 11.01**.

"***Exchange Rate***" means the rate at which any currency (the "***Pre-Exchange Currency***") may be exchanged into another currency (the "***Post-Exchange Currency***"), as set forth on such date on the relevant Reuters screen at or about 11:00 a.m. (Central time) on such date. In the event that such rate does not appear on the Reuters screen, the "Exchange Rate" with respect to exchanging such Pre-Exchange Currency into such Post-Exchange Currency shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Borrower and the Majority Lenders or, in the absence of such agreement, such Exchange Rate shall instead be determined by the Majority Lenders by any reasonable method as they deem applicable to determine such rate, and such determination shall be conclusive absent manifest error.

"***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 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, (b) Other Connection Taxes, (c) U.S. federal withholding Taxes that are imposed on amounts payable to a Lender to the extent that the obligation to withhold amounts existed on the date that such Lender became a "Lender" under this Agreement, except in each case to the extent such Lender is a direct or indirect assignee of any other Lender that was entitled, at the time the assignment of such other Lender became effective, to receive additional amounts under **Section 5.05**, (d) any Taxes imposed in connection with FATCA, (e) any Medicare Taxes, and (f) Taxes attributable to such Recipient's failure to comply with **Section 5.05(e)**.

"***Existing Shareholder Group***" means the group of investors who, on the date hereof, collectively own, directly or indirectly, beneficially or of record, capital stock representing more than 30% of the aggregate ordinary voting power represented by the issued and outstanding capital stock of Borrower, consisting of Domain Ventures, Texas Pacific Group, Delphi Ventures, HLM Venture Partners, and Kearny Venture Partners.

"***Existing Term Loan Agreement***" has the meaning set forth in the recitals hereto.

"***Existing Term Loans***" has the meaning set forth in the recitals hereto.

"***Expense Cap***" has the meaning set forth in the Fee Letter.

"***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 more onerous to comply with), any regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code.

"***Fee Letter***" means that fee letter agreement dated as of the date hereof between Borrower and the Lenders party thereto.

"***Foreign Lender***" means a Lender that is not a U.S. Person.

"***Foreign Subsidiary***" means a Subsidiary of Borrower that is not a Domestic Subsidiary.

"***GAAP***" means generally accepted accounting principles in the United States of America, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board and in such other statements by such other entity as may be in general use by significant segments of the accounting profession that are applicable to the circumstances as of the date of determination. Subject to **Section 1.02**, all references to "GAAP" shall be to GAAP applied consistently with the principles used in the preparation of the financial statements described in **Section 7.04(a)**.

"***Governmental Approval***" means any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

"***Governmental Authority***" means any nation, government, branch of power (whether executive, legislative or judicial), state, province or municipality or other political subdivision thereof and any entity exercising executive, legislative, judicial, monetary, regulatory or administrative functions of or pertaining to government, including without limitation regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, courts, bodies, boards, tribunals and dispute settlement panels, and other law-, rule- or regulation-making organizations or entities of any State, territory, county, city or other political subdivision of the United States.

"***Guarantee***" of or by any Person (the "***guarantor***") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "***primary obligor***") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition

or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

"***Guarantee Assumption Agreement***" means a Guarantee Assumption Agreement substantially in the form of **Exhibit A** by an entity that, pursuant to **Section 8.12(a)**, is required to become a "Subsidiary Guarantor" hereunder in favor of the Lenders.

"***Guaranteed Obligations***" has the meaning set forth in **Section 13.01**.

"***Hazardous Material***" means any substance, element, chemical, compound, product, solid, gas, liquid, waste, by-product, pollutant, contaminant or material which is hazardous or toxic, and includes, without limitation, (a) asbestos, polychlorinated biphenyls and petroleum (including crude oil or any fraction thereof) and (b) any material classified or regulated as "hazardous" or "toxic" or words of like import pursuant to an Environmental Law.

"***Hedging Agreement***" means any interest rate exchange agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

"***Indebtedness***" of any Person means, without duplication, (a) all obligations of such Person for borrowed money or obligations of such Person with respect to deposits or advances of any kind by third parties, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty (j) obligations under any Hedging Agreement currency swaps, forwards, futures or derivatives transactions, and (k) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"***Indemnified Party***" has the meaning set forth in **Section 12.03(b)**.

"***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 and (b) to the extent not otherwise described in clause (a), Other Taxes.

"***Insolvency Proceeding***" means (i) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (ii) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of any Person's creditors generally or any substantial portion of such Person's creditors, in each case undertaken under U.S. Federal, state or foreign law, including the Bankruptcy Code.

"***Intellectual Property***" means all Patents, Trademarks, Copyright, and Technical Information, whether registered or not, domestic and foreign. Intellectual Property shall include all:

a) applications or registrations relating to such Intellectual Property;

b) rights and privileges arising under applicable Laws with respect to such Intellectual Property;

c) rights to sue for past, present or future infringements of such Intellectual Property; and

d) rights of the same or similar effect or nature in any jurisdiction corresponding to such Intellectual Property throughout the world.

"***Interest-Only Period***" means the period from and including the Closing Date and through and including the sixteenth (16th) Payment Date.

"***Interest Period***" means, with respect to each Borrowing, (i) initially, the period commencing on and including the Borrowing Date thereof and ending on and including the next Payment Date, and, (ii) thereafter, each period beginning on and including the day following the immediately preceding Interest Period and ending on and including the next succeeding Payment Date; *provided that* the term "Interest Period" shall include any period selected by the Majority Lenders from time to time in accordance with the definition of "Post-Default Rate".

"***Invention***" means any novel, inventive and useful art, apparatus, method, process, machine (including article or device), manufacture or composition of matter, or any novel, inventive and useful improvement in any art, method, process, machine (including article or device), manufacture or composition of matter.

"***Investment***" means, for any Person: (a) the acquisition (whether for cash, property, services or securities or otherwise) of capital stock, bonds, notes, debentures, partnership or other ownership interests or other securities of any other Person or any agreement to make any such acquisition (including any "short sale" or any sale of any securities at a time when such securities are not owned by the Person entering into such sale); (b) the making of any deposit with, or advance, loan or other extension of credit to, any other Person (including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such Person), but excluding any such advance, loan or extension of credit having a term not exceeding 90 days arising in connection with the sale of inventory or supplies by such Person in the ordinary course of business; (c) the entering into of any Guarantee of, or other contingent obligation with respect to, Indebtedness or other liability of any other

Person and (without duplication) any amount committed to be advanced, lent or extended to such Person; or (d) the entering into of any Hedging Agreement.

"***IRS***" means the U.S. Internal Revenue Service or any successor agency, and to the extent relevant, the U.S. Department of the Treasury.

"***Knowledge***" means the actual knowledge of any Responsible Officer of any Person or, so long as he is employed by the Borrower or its Subsidiaries, and the actual knowledge of Robert Anacone, so long as he is an executive officer of the Borrower.

"***Landlord Consent***" means each landlord consent with respect to the Borrower Facility duly executed and delivered by the Borrower in connection with this Agreement.

"***Laws***" means, collectively, all international, foreign, federal, state, provincial, territorial, municipal and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"***Lenders***" means Capital Royalty Partners II L.P., CRPPF, CRPC and CRPPFC, together with their successors and each assignee of a Lender pursuant to **Section 12.05(b)** and "Lender" means any one of them.

"***Lien***" means any mortgage, lien, pledge, charge or other security interest, or any lease, title retention agreement, mortgage, restriction, easement, right-of-way, option or adverse claim (of ownership or possession) or other encumbrance of any kind or character whatsoever or any preferential arrangement that has the practical effect of creating a security interest

"***Liquidity***" means the balance of unencumbered (other than by Liens securing the Obligations and the New Tranche Term Loan Obligations) cash and Permitted Cash Equivalent Investments (which for greater certainty shall not include any undrawn credit lines), in each case, to the extent held in an account over which the Lenders have a first priority perfected security interest.

"***Loan***" means (i) each loan advanced by a Lender pursuant to **Section 2.01** and (ii) each PIK Loan deemed to have been advanced by a Lender pursuant to **Section 3.02(d)**. For purposes of clarification, any calculation of the aggregate outstanding principal amount of Loans on any date of determination shall include both the aggregate principal amount of loans advanced pursuant to **Section 2.01** and not yet repaid, and all PIK Loans deemed to have been advanced and not yet repaid, on or prior to such date of determination.

"***Loan Documents***" means, collectively, this Agreement, the Notes, the Security Documents, each Warrant, the Fee Letter, any subordination agreement or any intercreditor agreement entered into by Lenders with any other creditors of Obligors, including the Capital Royalty Intercreditor Agreement, and any other present or future document, instrument,

agreement or certificate executed by Obligors for the benefit of Lenders in connection with this Agreement or any of the other Loan Documents, all as amended, restated, or otherwise modified.

"***Loss***" means judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any Claim or any proceeding relating to any Claim.

"***Majority Lenders***" means, at any time, Lenders having at such time in excess of 50% of the aggregate Commitments (or, if such Commitments are terminated, the outstanding principal amount of the Loans) then in effect, ignoring, in such calculation, the Commitments of and outstanding Loans owing to any Defaulting Lender.

"***Margin Stock***" means "margin stock" within the meaning of Regulations U and X.

"***Material Adverse Change***" and "***Material Adverse Effect***" mean a material adverse change in or effect on (i) the business, condition (financial or otherwise), operations, performance, Property or prospects of Borrower and its Subsidiaries taken as a whole, (ii) the ability of any Obligor to perform its obligations under the Loan Documents, or (iii) the legality, validity, binding effect or enforceability of the Loan Documents or the rights and remedies of the Lenders under any of the Loan Documents.

"***Material Agreements***" means (a) that certain Amended and Restated Development and Commercialization Agreement, dated January 4, 2013 by and between Borrower and DexCom, Inc., (b) that certain Research, Development and Commercialization Agreement, dated January 2, 2013, by and between Borrower and JDRF, and (c) the agreements required to be filed with the SEC as material contracts under Item 601(b)(10) of Regulation S-K of the Securities Act of 1933, as amended, excluding compensation arrangements. "Material Agreement" means any one such agreement.

"***Material Indebtedness***" means, at any time, any Indebtedness of any Obligor the outstanding principal amount of which, individually or in the aggregate, exceeds $500,000 (or the Equivalent Amount in other currencies).

"***Material Intellectual Property***" means, the Obligor Intellectual Property described in **Schedule 7.05(c)** and any other Obligor Intellectual Property after the date hereof the loss of which could reasonably be expected to have a Material Adverse Effect.

"***Maturity Date***" means the earlier to occur of (i) the twenty-fourth (24th) Payment Date following the Closing Date, and (ii) the date on which the Loans are accelerated pursuant to **Section 11.02**.

"***Maximum Rate***" has the meaning set forth in **Section 12.18.**

"Medicare Tax" means Section 1411 of the Code, as of the date of this Agreement (or any amended or successor version), and any regulations or official interpretations thereof.

"***Multiemployer Plan***" means any multiemployer plan, as defined in Section 400l(a)(3) of ERISA, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

"***New Tranche Term Loan Agreement***" has the meaning set forth in the recitals hereto.

"***New Tranche Term Loan Lenders***" means the "Lenders" as defined in the New Tranche Term Loan Agreement.

"***New Tranche Term Loan Obligations***" means the "Obligations" as defined in the New Tranche Term Loan Agreement.

"***Non-Consenting Lender***" has the meaning set forth in **Section 2.07(a)**.

"***Non-Disclosure Agreement***" has the meaning set forth in **Section 12.16**.

"***Note***" means a promissory note executed and delivered by the Borrower to the Lenders in accordance with **Section 2.04** or **3.02(d)**.

"***Obligations***" means, with respect to any Obligor, all amounts, obligations, liabilities, covenants and duties of every type and description owing by such Obligor to any Lender, any other indemnitee hereunder or any participant, arising out of, under, or in connection with, any Loan Document, whether direct or indirect (regardless of whether acquired by assignment), absolute or contingent, due or to become due, whether liquidated or not, now existing or hereafter arising and however acquired, and whether or not evidenced by any instrument or for the payment of money, including, without duplication, (i) if such Obligor is the Borrower, all Loans, (ii) all interest, whether or not accruing after the filing of any petition in bankruptcy or after the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding, and (iii) all other fees, expenses (including fees, charges and disbursement of counsel), interest, commissions, charges, costs, disbursements, indemnities and reimbursement of amounts paid and other sums chargeable to such Obligor under any Loan Document.

"***Obligor Intellectual Property***" means Intellectual Property owned by or licensed to any of the Obligors.

"***Obligors***" means, collectively, the Borrower and the Subsidiary Guarantors and their respective successors and permitted assigns.

"***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 or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution,

delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 5.05(g)**).

"***Participant***" has the meaning set forth in **Section 12.05(e)**.

"***Patents***" is defined in the Security Agreement.

"***Payment Date***" means each March 31, June 30, September 30, December 31 and the Maturity Date, commencing on the first Payment Date to occur following the first Borrowing Date; *provided that*, if any such date shall occur on a day that is not a Business Day, the applicable Payment Date shall be the next preceding Business Day.

"***PBGC***" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"***Permitted Acquisition***" means any acquisition by the Borrower or any of its wholly-owned Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Equity Interests of, or a business line or unit or a division of, any Person; provided that:

(a) immediately prior to, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(b) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable Laws and in conformity with all applicable Governmental Approvals;

(c) in the case of the acquisition of all of the Equity Interests of such Person, all of the Equity Interests (except for any such securities in the nature of directors' qualifying shares required pursuant to applicable Law) acquired, or otherwise issued by such Person or any newly formed Subsidiary of the Borrower in connection with such acquisition, shall be owned 100% by the Borrower, a Subsidiary Guarantor or any other Subsidiary, and the Borrower shall have taken, or caused to be taken, as of the date such Person becomes a Subsidiary of the Borrower, each of the actions set forth in **Section 8.12**, if applicable;

(d) the Borrower and its Subsidiaries shall be in compliance with the financial covenants set forth in **Sections 10.01** and **10.03** on a pro forma basis after giving effect to such acquisition; and

(e) such Person (in the case of an acquisition of Equity Interests) or assets (in the case of an acquisition of assets or a division) (i) shall be engaged or used, as the case may be, in substantially the same business or lines of business in which the Borrower and/or its Subsidiaries are engaged or (ii) shall have a similar customer base as the Borrower and/or its Subsidiaries.

"***Permitted Cash Equivalent Investments***" means (i) marketable direct obligations issued or unconditionally guaranteed by the United States, including obligations issued by a United States government sponsored enterprise, or any agency or any State thereof, or any political subdivision or municipality of any such State, provided such obligations that are long-term have a credit rating from Standard & Poor's Ratings Group or Fitch Rating of at least AA or from Moody's Investors Service, Inc. of at least Aa, and such municipal obligations that only have a short-term rating have a credit rating from Moody's Investors Service, Inc. of at least MIG1 or from Standard & Poor's Ratings Group of at least SP-1 having maturities of not more than two (2) years from the date of acquisition; (ii) commercial paper maturing no more than one (1) year after its creation and, at the time of acquisition, having a rating from either Standard & Poor's Ratings Group of at least A-1 or Moody's Investors Service, Inc. of at least P-1; (iii) certificates of deposit (including Eurodollar certificates of deposit), time deposits, overnight bank deposits or bankers' acceptances maturing within one (1) year from the date of acquisition thereof issued by any bank insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation having at the date of acquisition thereof combined capital and surplus of not less than $500,000,000 and, at the time of acquisition, having a rating from either Standard & Poor's Ratings Group of at least A-1 or Moody's Investors Service, Inc. of at least P-1; (iv) Investments in money market funds registered according to SEC Rule 2a-7 of the Investment Company Act of 1940, as amended, and that maintain a net asset value of $1.00 per share and maintain a minimum of $1,000,000,000 in assets; and (v) corporate bonds, including Eurodollar issues of United States domestic corporations, and U.S. dollar denominated issues of foreign corporations, provided such obligations have a credit rating from Standard & Poor's Ratings Group or Fitch Rating of at least AA or from Moody's Investors Service, Inc. of at least Aa.

"***Permitted Indebtedness***" means any Indebtedness permitted under **Section 9.01**.

"***Permitted Liens***" has the meaning set forth in **Section 9.02**.

"***Permitted Priority Debt***" means Indebtedness of the Borrower, in an amount not to exceed at any time 80% of the face amount at such time of the Borrower's eligible accounts receivable; *provided that* (a) such Indebtedness, if secured, is secured solely by the Borrower's accounts receivable and inventory, cash proceeds thereof, and cash and (b) the holders or lenders thereof have executed and delivered to Lenders an intercreditor agreement reasonably satisfactory to the Majority Lenders.

"***Permitted Refinancing***" means, with respect to any Indebtedness, any extensions, renewals and replacements of such Indebtedness; *provided that* such extension, renewal or replacement (i) shall not increase the outstanding principal amount of such Indebtedness, (ii) contains terms relating to outstanding principal amount, amortization, maturity, collateral (if any) and subordination (if any), and other material terms taken as a whole no less favorable in any material respect to the Borrower and its Subsidiaries or the Lenders than the terms of any agreement or instrument governing such existing Indebtedness, (iii) shall have an applicable interest rate which does not exceed the rate of interest of the Indebtedness being replaced, and (iv) shall not contain any new requirement to grant any lien or security or to give any guarantee that was not an existing requirement of such Indebtedness.

"***Permitted Restrictive Agreements***" has the meaning set forth in **Section 7.15**.

"***Permitted Subordinated Debt***" means Indebtedness:

(i) that is governed by documentation containing representations, warranties, covenants and events of default no more burdensome or restrictive than those contained in the Loan Documents, (ii) that has a maturity date later than the Maturity Date, (iii) in respect of which no cash payments of principal or interest are required prior to the Maturity Date, and (iv) in respect of which the holders have agreed in favor of the Borrower and Lenders that (A) prior to the date on which the Commitments have expired or been terminated and all Obligations (other than the Warrant Obligations) have been paid in full indefeasibly in cash, such holders will not exercise any remedies available to them in respect of such Indebtedness, and (B) all Liens (if any) securing such Indebtedness are subordinated to the Liens securing the Obligations.

"***Person***" means any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or Governmental Authority or other entity of whatever nature.

"***PIK Loan***" has the meaning set forth in **Section 3.02(d)**.

"***PIK Period***" means the period beginning on the Closing Date and ending on the earlier to occur of (i) the sixteenth (16th) Payment Date after the Closing Date and (ii) the date on which any Event of Default shall have occurred (*provided that* if such Event of Default shall have been cured or waived, the PIK Period shall resume until the earlier to occur of the next Event of Default and the sixteenth (16th)Payment Date after the Closing Date).

"***Plan***" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"***Post-Default Rate***" has the meaning set forth in **Section 3.02(b)**.

"***Prepayment Premium***" has the meaning set forth in **Section 3.03(a)**.

"***Prior Closing Date***" has the meaning set forth in the recitals hereto.

"***Product***" means the t:slim Insulin Delivery System or its successors, in a form substantially similar to that as approved by the U.S. Food and Drug Administration in November 2011.

"***Property***" of any Person means any property or assets, or interest therein, of such Person.

"***Proportionate Share***" means, with respect to any Lender, the percentage obtained by dividing (a) the sum of the Commitment (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of such Lender then in effect by (b) the sum of the Commitments (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of all Lenders then in effect.

"***Qualified Plan***" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by any Obligor or any ERISA Affiliate thereof or to which any Obligor or any ERISA Affiliate thereof has ever made, or was ever obligated to make, contributions, and (ii) that is intended to be tax qualified under Section 401(a) of the Code.

"***Real Property Security Documents***" means the Landlord Consent and the Collateral Access Agreement, and any mortgage or deed of trust or any other real property security document executed or required hereunder or under the Security Agreement to be executed by any Obligor and granting a security interest in real Property owned or leased (as tenant) by any Obligor in favor of the Lenders.

"***Recipient***" means any Lender or any other recipient of any payment to be made by or on account of any Obligation.

"***Redemption Date***" has the meaning set forth in **Section 3.03(a)**.

"***Redemption Price***" has the meaning set forth in **Section 3.03(a)**.

"***Register***" has the meaning set forth in **Section 12.05(d)**.

"***Regulation T***" means Regulation T of the Board of Governors of the Federal Reserve System, as amended.

"***Regulation U***" means Regulation U of the Board of Governors of the Federal Reserve System, as amended.

"***Regulation X***" means Regulation X of the Board of Governors of the Federal Reserve System, as amended.

"***Regulatory Approvals***" means any registrations, licenses, authorizations, permits or approvals issued by any Governmental Authority and applications or submissions related to any of the foregoing.

"***Requirement of Law***" means, as to any Person, any statute, law, treaty, rule or regulation or determination, order, injunction or judgment of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its Properties or revenues.

"***Responsible Officer***" of any Person means the President, chief executive officer, chief operations officer/vice president of operations, or chief financial officer of such Person.

"***Restricted Payment***" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of the Borrower or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such shares of capital stock of the Borrower or any of its Subsidiaries or any option, warrant or other right to acquire any such shares of capital stock of

the Borrower or any of its Subsidiaries.

"***Revenue***" of a Person means all revenue properly recognized under GAAP, consistently applied, less all rebates, discounts and other price allowances.

"***SBA***" means U.S. Small Business Administration.

"***SBIC***" means Small Business Investment Company.

"***SEC***" means Securities and Exchange Commission.

"***Security Agreement***" means the Security Agreement, dated as of December 24, 2012, among the Obligors and the Lenders, granting a security interest in the Obligors' personal Property in favor of the Lenders.

"***Security Documents***" means, collectively, the Security Agreement, each Short-Form IP Security Agreement, each Real Property Security Document, and each other security document, control agreement or financing statement required or recommended to perfect Liens in favor of the Lenders.

"***Securities Account***" is defined in the Security Agreement.

"***Short-Form IP Security Agreements***" means short-form copyright, patent or trademark (as the case may be) security agreements entered into by one or more Obligors in favor of the Lenders, each in form and substance satisfactory to the Majority Lenders (and as amended, modified or replaced from time to time).

"***Solvent***" means, with respect to any Person at any time, that (a) the present fair saleable 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 saleable value of the Property 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 has not incurred and does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature and (d) such Person would not be unable to obtain a letter from its auditors that did not contain a going concern qualification.

"***Specified Financial Covenants***" has the meaning set forth in **Section 10.02(a)**.

"***Subordinated Debt Cure Right***" has the meaning set forth in **Section 10.02(a)**.

"***Subsidiary***" means, with respect to any Person (the "***parent***") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b)

that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"***Subsidiary Guarantors***" means each of the Subsidiaries of the Borrower identified under the caption "SUBSIDIARY GUARANTORS" on the signature pages hereto and each Subsidiary of the Borrower that becomes, or is required to become, a "Subsidiary Guarantor" after the date hereof pursuant to **Section 8.12(a) or (b)**.

"***Substitute Lender***" has the meaning set forth in **Section 2.07(a)**.

"***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, additions to tax or penalties applicable thereto.

"***Technical Information***" means all trade secrets and other proprietary or confidential information, public information, non-proprietary know-how, any information of a scientific, technical, or business nature in any form or medium, standards and specifications, conceptions, ideas, innovations, discoveries, Invention disclosures, all documented research, developmental, demonstration or engineering work and all other information, data, plans, specifications, reports, summaries, experimental data, manuals, models, samples, know-how, technical information, systems, methodologies, computer programs, information technology and any other information.

"***Title IV Plan***" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by any Obligor or any ERISA Affiliate thereof or to which any Obligor or any ERISA Affiliate thereof has ever made, or was obligated to make, contributions, and (ii) that is or was subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA.

"***Trademarks***" is defined in the Security Agreement.

"***Transactions***" means the execution, delivery and performance by each Obligor of this Agreement and the other Loan Documents to which such Obligor is intended to be a party and the Borrowings (and the use of the proceeds of the Loans).

"***U.S. Person***" means a "United States Person" within the meaning of Section 7701(a)(30) of the Code.

"***U.S. Tax Compliance Certificate***" has the meaning set forth in Section 5.05(e)(ii)(B)(3).

"***Warrant***" means each warrant to purchase capital stock of the Borrower issued by the Borrower to the Lenders on the Prior Closing Date in connection with the transactions contemplated under the Existing Term Loan Agreement.

"***Warrant Obligations***" means, with respect to any Obligor, all Obligations arising out of, under, or in connection with, any Warrants.

"***Withdrawal Liability***" means, at any time, any liability incurred (whether or not assessed) by any ERISA Affiliate and not yet satisfied or paid in full at such time with respect to

any Multiemployer Plan pursuant to Section 4201 of ERISA.

1.02 Accounting Terms and Principles. All accounting determinations required to be made pursuant hereto shall, unless expressly otherwise provided herein, be made in accordance with GAAP. All components of financial calculations made to determine compliance with this Agreement, including **Section 10**, shall be adjusted to include or exclude, as the case may be, without duplication, such components of such calculations attributable to any Acquisition consummated after the first day of the applicable period of determination and prior to the end of such period, as determined in good faith by the Borrower based on assumptions expressed therein and that were reasonable based on the information available to the Borrower at the time of preparation of the Compliance Certificate setting forth such calculations.

1.03 Interpretation. For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires, (a) the terms defined in this Agreement include the plural as well as the singular and vice versa; (b) words importing gender include all genders; (c) any reference to a Section, Annex, Schedule or Exhibit refers to a Section of, or Annex, Schedule or Exhibit to, this Agreement; (d) any reference to "this Agreement" refers to this Agreement, including all Annexes, Schedules and Exhibits hereto, and the words herein, hereof, hereto and hereunder and words of similar import refer to this Agreement and its Annexes, Schedules and Exhibits as a whole and not to any particular Section, Annex, Schedule, Exhibit or any other subdivision; (e) references to days, months and years refer to calendar days, months and years, respectively; (f) all references herein to "include" or "including" shall be deemed to be followed by the words "without limitation"; (g) the word "from" when used in connection with a period of time means "from and including" and the word "until" means "to but not including"; and (h) accounting terms not specifically defined herein shall be construed in accordance with GAAP (except for the term "property" , which shall be interpreted as broadly as possible, including, in any case, cash, securities, other assets, rights under contractual obligations and permits and any right or interest in any property, except where otherwise noted). Unless otherwise expressly provided herein, references to organizational documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all permitted subsequent amendments, restatements, extensions, supplements and other modifications thereto.

1.04 Changes to GAAP. If, after the date hereof, any change occurs in GAAP or in the application thereof and such change would cause any amount required to be determined for the purposes of the covenants to be maintained or calculated pursuant to **Section 8**, **9** or **10** to be materially different than the amount that would be determined prior to such change, then:

(a) the Borrower will provide a detailed notice of such change (an "***Accounting Change Notice***") to the Lenders (which requirement will be deemed satisfied by the description thereof in a Form 10-K, Form 10-Q or Form 8-K filed with the SEC);

(b) either the Borrower or the Majority Lenders may indicate within 90 days following the date of the Accounting Change Notice that they wish to revise the method of calculating such financial covenants or amend any such amount, in which case the parties will in good faith attempt to agree upon a revised method for calculating the financial covenants;

(c) until the Borrower and the Majority Lenders have reached agreement on such revisions, (i) such financial covenants or amounts will be determined without giving effect to such change and (ii) all financial statements, Compliance Certificates and similar documents provided hereunder shall be provided together with a reconciliation between the calculations and amounts set forth therein before and after giving effect to such change in GAAP;

(d) if no party elects to revise the method of calculating the financial covenants or amounts, then the financial covenants or amounts will not be revised and will be determined in accordance with GAAP without giving effect to such change; and

(e) any Event of Default arising as a result of such change which is cured by operation of this **Section 1.04** shall be deemed to be of no effect *ab initio*.

1.05 Amendment and Restatement and Continuing Security.

(a) As stated in the recitals hereof, this Agreement is intended to amend, restate and supersede the Existing Term Loan Agreement, without novation. Upon the Closing Date, all references in any Loan Document and all other agreements, documents and instruments delivered by the Borrower, any Subsidiary Guarantor, any of the Lenders or any other Person to (i) the "Term Loan Agreement" shall be deemed to refer to this Amended and Restated Term Loan Agreement (except where the context otherwise requires) and (ii) a "Lender" or the "Control Agent" shall mean such terms as defined in this Amended and Restated Term Loan Agreement. As to all periods occurring on or after the Closing Date, all of the terms and conditions set forth in the Existing Term Loan Agreement shall be of no further force and effect; it being understood that all obligations of each Obligor under the Existing Term Loan Agreement shall be governed by this Amended and Restated Term Loan Agreement from and after the Closing Date.

(b) The parties hereto acknowledge and agree that all principal, interest, fees, costs, reimbursable expenses and indemnification obligations accruing or arising under or in connection with the Existing Term Loan Agreement which remain unpaid and outstanding as of the Closing Date shall be and remain outstanding and payable as an obligation under this Agreement and the other Loan Documents.

(c) Borrower hereby ratifies, affirms and acknowledges all of its obligations in respect of the Existing Term Loan Agreement, as amended and restated hereby, and the related documents and agreements delivered by it thereunder.

(d) It is the intention of each of the parties hereto that the Existing Term Loan Agreement be amended and restated by the provisions hereof so as to preserve the perfection and priority of all security interests securing indebtedness and obligations under the Existing Term Loan Agreement and that all indebtedness and obligations of the Obligors hereunder shall be secured by the Security Documents and that this Agreement does not constitute a novation of the obligations and liabilities existing under the Existing Term Loan Agreement except to the extent superseded by this Amended and Restated Term Loan Agreement after the Closing Date. Borrower hereby confirms that the validity, effect and enforceability of all Collateral and the guarantee of the Obligations by any Subsidiary Guarantors shall remain unaffected by this

amendment and restatement. The parties agree that the Obligations secured by the Collateral and the guarantee of any Subsidiary Guarantors shall include the obligations under or in connection with this amendment and restatement (including any term loans).

SECTION 2
THE COMMITMENT

2.01 Commitments. Each Lender agrees severally, on and subject to the terms and conditions of this Agreement (including **Section 6**), to make a term loan (provided that PIK Loans shall be deemed not to constitute "term loans" for purposes of this **Section 2.01**) to the Borrower, each on the Closing Date in Dollars in an aggregate principal amount for such Lender not to exceed such Lender's Commitment; *provided*, *however*, that at no time shall any Lender be obligated to make a Loan in excess of such Lender's Proportionate Share of the amount by which the then effective Commitments exceeds the aggregate principal amount of Loans outstanding at such time. Amounts of Loans repaid may not be reborrowed.

2.02 [Reserved]

2.03 Fees. The Borrower shall pay to the Lenders such fees as described in the Fee Letter.

2.04 Notes. If requested by any Lender, the Loans of such Lender shall be evidenced by one or more promissory notes (each a "***Note***"). The Borrower shall prepare, execute and deliver to the Lenders such promissory note(s) payable to the Lenders (or, if requested by the Lenders, to the Lenders and their registered assigns) and in the form attached hereto as **Exhibit C-1**. Thereafter, the Loans and interest thereon shall at all times (including after assignment pursuant to **Section 12.05**) be represented by one or more promissory notes in such form payable to the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

2.05 Use of Proceeds. The Borrower shall use the proceeds of the Loans to repay in full and terminate the Existing Term Loans and for general working capital purposes.

2.06 Defaulting Lenders.

(a) **Adjustments**. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that 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 **Section 12.04**.

(ii) **Reallocation of Payments**. Any payment of principal, interest, fees or other amounts received by the Lenders for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to **Section 11** or otherwise), shall be applied at such time or times as follows: first, as the Borrower may request (so long as no Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its

portion thereof as required by this Agreement; second, if so determined by the Majority Lenders and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of such Defaulting Lender to fund Loans under this Agreement; third, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fourth, so long as no 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 fifth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (A) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share and (B) such Loans were made at a time when the conditions set forth in **Section 6** were satisfied or waived, such payment shall be applied solely to pay the Loans of all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender. 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 pursuant to this **Section 2.06(a)(ii)** shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) **Defaulting Lender Cure**. If the Borrower and the Majority Lenders agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as necessary to cause the Loans to be held on a pro rata basis by the Lenders in accordance with their Proportionate Share, whereupon that 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.

2.07 Substitution of Lenders.

(a) **Substitution Right**. In the event that any Lender (an "***Affected Lender***"), (i) becomes a Defaulting Lender or (ii) does not consent to any amendment, waiver or consent to any Loan Document for which the consent of the Majority Lenders is obtained but that requires the consent of other Lenders (a "***Non-Consenting Lender***"), either the Borrower may pay in full such Affected Lender with respect to amounts due or such Affected Lender may be substituted by any willing Lender or Affiliate of any Lender or Eligible Transferee (in each case, a "***Substitute Lender***"); *provided that* any substitution of a Non-Consenting Lender shall occur only with the consent of Majority Lenders.

(b) **Procedure**. To substitute such Affected Lender or pay in full the Obligations owed to such Affected Lender, the Borrower shall deliver a notice to such Affected Lender. The effectiveness of such payment or substitution shall be subject to the delivery by the Borrower (or, as may be applicable in the case of a substitution, by the Substitute Lender) of (i) payment for the account of such Affected Lender, of, to the extent accrued through, and outstanding on, the

effective date for such payment or substitution, all Obligations owing to such Affected Lender (which for the avoidance of doubt, shall not include any Prepayment Premium) and (ii) in the case of a substitution, an Assignment and Acceptance whereby the Substitute Lender shall, among other things, agree to be bound by the terms of the Loan Documents.

(c) **Effectiveness**. Upon satisfaction of the conditions set forth in **Section 2.07(a)** and **Section 2.07(b)** above, the Control Agent shall record such substitution or payment in the Register, whereupon (i) in the case of any payment in full of an Affected Lender, such Affected Lender's Commitments shall be terminated and (ii) in the case of any substitution of an Affected Lender, (A) such Affected Lender shall sell and be relieved of, and the Substitute Lender shall purchase and assume, all rights and claims of such Affected Lender under the Loan Documents, except that (1) the Affected Lender shall retain such rights expressly providing that they survive the repayment of the Obligations and the termination of the Commitments and (2) a Non-Consenting Lender shall be permitted to retain any Warrants issued to such Non-Consenting Lender, (B) such Substitute Lender shall become a "Lender" hereunder and (C) such Affected Lender shall execute and deliver an Assignment and Acceptance to evidence such substitution; *provided*, *however*, that the failure of any Affected Lender to execute any such Assignment and Acceptance shall not render such sale and purchase (or the corresponding assignment) invalid.

SECTION 3
PAYMENTS OF PRINCIPAL AND INTEREST

3.01 Repayment.

(a) **Repayment**. During the Interest-Only Period, no payments of principal of the Loans shall be due. Borrower agrees to repay to the Lenders the outstanding principal amount of the Loans, on each Payment Date occurring after the Interest-Only Period, in equal installments. The amounts of such installments shall be calculated by dividing (i) the sum of the aggregate principal amount of the Loans outstanding on the first day following the end of the Interest-Only Period, by (b) the number of Payment Dates remaining prior to the Maturity Date.

(b) **Application**. Any optional or mandatory prepayment of the Loans shall be applied to the installments thereof under **Section 3.01(a)** in the inverse order of maturity. To the extent not previously paid, the principal amount of the Loans, together with all other outstanding Obligations (other than the Warrant Obligations), shall be due and payable on the Maturity Date.

3.02 Interest.

(a) **Interest Generally**. Subject to **Section 3.02(d)**, Borrower agrees to pay to the Lenders interest on the unpaid principal amount of the Loans and the amount of all other outstanding Obligations, in the case of the Loans, for the period from the applicable Borrowing Date, and in the case of any other Obligation, from the date such other Obligation is due and payable, in each case, until paid in full, at a rate *per annum* equal to 11.50%.

(b) **Default Interest**. Notwithstanding the foregoing, upon the occurrence and during the continuance of any Event of Default, the interest payable pursuant to **Section 3.02(a)** shall increase automatically by 4.00% *per annum* (such aggregate increased rate, the "***Post-Default***

Rate"). Notwithstanding any other provision herein (including **Section 3.02(d)**), if interest is required to be paid at the Post-Default Rate, it shall be paid entirely in cash. If any Obligation is not paid when due under the applicable Loan Document, the amount thereof shall accrue interest at a rate equal to 4.00% *per annum* (without duplication of interest payable at the Post-Default Rate).

(c) **Interest Payment Dates**. Accrued interest on the Loans shall be payable in arrears on the last day of each Interest Period in cash, and upon the payment or prepayment thereof (on the principal amount so paid or prepaid); *provided that* interest payable at the Post-Default Rate shall be payable from time to time on demand.

(d) **Paid In-Kind Interest**. Notwithstanding **Section 3.01(a)**, at any time during the PIK Period, the Borrower may elect to pay the interest on the outstanding principal amount of the Loans payable pursuant to **Section 3.01** as follows: (i) only 9.50% of the 11.50% *per annum* interest in cash and (ii) 2.00% of the 11.50% *per annum* interest as compounded interest, added to the aggregate principal amount of the Loans (the amount of any such compounded interest being a "***PIK Loan***"). Each PIK Loan shall be evidenced by a Note in the form of **Exhibit C-2**. The principal amount of each PIK Loan shall accrue interest in accordance with the provisions of this Agreement applicable to the Loans.

3.03 Prepayments.

(a) **Optional Prepayments**. The Borrower shall have the right optionally to prepay the outstanding principal amount of the Loans in whole or in part on any Payment Date (a "***Redemption Date***") for an amount equal to the aggregate principal amount of the Loans being prepaid plus the Prepayment Premium plus any accrued but unpaid interest and any fees which are due and owing (such aggregate amount, the "***Redemption Price***"). The applicable "***Prepayment Premium***" shall be an amount calculated pursuant to **Section 3.03(a)(i)**.

(i) If the Redemption Date occurs:

(A) on or prior to the fourth Payment Date, the Prepayment Premium shall be an amount equal to 3.00% of the aggregate outstanding principal amount of the Loans being prepaid on such Redemption Date;

(B) after the fourth Payment Date, and on or prior to the eighth Payment Date, the Prepayment Premium shall be an amount equal to 2.00% of the aggregate outstanding principal amount of the Loans being prepaid on such Redemption Date;

(C) after the eighth Payment Date, and on or prior to the twelfth Payment Date, the Prepayment Premium shall be an amount equal to 1.00% of the aggregate outstanding principal amount of the Loans being prepaid on such Redemption Date;

(D) after the twelfth Payment Date, the Prepayment Premium shall be an amount equal to 0.00% of the aggregate outstanding principal amount of the Loans being prepaid on such Redemption Date.

(ii) To determine the aggregate outstanding principal amount of the Loans, and how many Payment Dates have occurred, as of any Redemption Date for purposes of **Section 3.03(a)(i)**, the number of Payment Dates shall be deemed to be the number of Payment Dates that shall have occurred following the Closing Date.

(iii) No partial prepayment shall be made under this **Section 3.03(a)** except in connection with any event described in **Section 3.03(b)** and then only to the extent provided in **Section 3.03(b)**.

(iv) On or prior to the Redemption Date, the Lenders may notify Borrower of a reduction in the amounts due under **Section 3.03(a)(i)** with respect to any portion of the Loans held by any entity licensed by the SBA as an SBIC.

(v) Notwithstanding the foregoing, the Borrower shall not be required to pay any Prepayment Premium in connection with the prepayment of the Existing Term Loans with the proceeds of the Loans on the Closing Date. For the avoidance of doubt, the Lenders that were "Lenders" in the Existing Term Loan Agreement hereby waive their rights to receive any "Prepayment Premium" (as defined in the Existing Term Loan Agreement) in connection with such prepayment.

(b) **Mandatory Prepayments.**

(i) **Asset Sales**. In the event of any contemplated Asset Sale not permitted under **Section 9.09**, the Borrower shall provide 30 days' prior written notice of such Asset Sale to the Lenders and, if within such notice period Majority Lenders advise the Borrower that a prepayment is required pursuant to this **Section 3.03(b)(i)**, the Borrower shall: (x) if the assets sold represent substantially all of the assets or revenues of the Borrower, or represent any specific line of business which either on its own or together with other lines of business sold over the term of this Agreement account for revenue generated by such lines of business exceeding 10% of the revenue of the Borrower in the immediately preceding year, prepay the aggregate outstanding principal amount of the Loans in an amount equal to the Redemption Price applicable on the date of such Asset Sale in accordance with **Section 3.03(a)**, and (y) in the case of all other Asset Sales not described in the foregoing **clause (x)**, prepay the Loans in an amount equal to the entire amount of the Asset Sale Net Proceeds of such Asset Sale, plus any accrued but unpaid interest and any fees which are due and owing, credited in the following order:

(A) first, in reduction of the Borrower's obligation to pay any unpaid interest and any fees which are due and owing;

(B) second, in reduction of the Borrower's obligation to pay any Claims or Losses referred to in **Section 12.03** which are due and owing;

(C) third, in reduction of the Borrower's obligation to pay any amounts due and owing on account of the unpaid principal amount of the Loans;

(D) fourth, in reduction of any other Obligation which are due and owing; and

(E) fifth, to the Borrower or such other Persons as may lawfully be entitled to or directed by the Borrower to receive the remainder.

(ii) **Change of Control**. In the event of a Change of Control, the Borrower shall immediately provide notice of such Change of Control to the Lenders and, if within 10 days of receipt of such notice Majority Lenders notify the Borrower in writing that a prepayment is required pursuant to this **Section 3.03(b)(ii)**, the Borrower shall prepay the aggregate outstanding principal amount of the Loans in an amount equal to the Redemption Price applicable on the date of such Change of Control in accordance with **Section 3.03(a)**.

SECTION 4
PAYMENTS, ETC.

4.01 Payments.

(a) **Payments Generally**. Each payment of principal, interest and other amounts to be made by the Obligors under this Agreement or any other Loan Document shall be made in Dollars, in immediately available funds, without deduction, set off or counterclaim, to an account to be designated by the Majority Lenders by notice to the Borrower, not later than 4:00 p.m. (Central time) on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day).

(b) **Application of Payments**. Each Obligor shall, at the time of making each payment under this Agreement or any other Loan Document, specify to the Lenders the amounts payable by such Obligor hereunder to which such payment is to be applied (and in the event that Obligors fail to so specify, or if an Event of Default has occurred and is continuing, the Lenders may apply such payment in the manner they determine to be appropriate).

(c) **Non-Business Days**. If the due date of any payment under this Agreement (other than of principal of or interest on the Loans) would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

4.02 Computations. All computations of interest and fees hereunder shall be computed on the basis of a year of 360 days and actual days elapsed (including the first day but excluding the last day) occurring in the period for which payable.

4.03 Notices. Each notice of optional prepayment shall be effective only if received by the Lenders not later than 4:00 p.m. (Central time) on the date one Business Day prior to the date of prepayment. Each notice of optional prepayment shall specify the amount to be prepaid and the date of prepayment.

4.04 Set-Off.

(a) **Set-Off Generally**. Upon the occurrence and during the continuance of any Event of Default, the Lenders and each of their Affiliates are hereby authorized at any time and

from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Lenders or such Affiliate to or for the credit or the account of the Borrower against any and all of the Obligations, whether or not the Lenders shall have made any demand and although such obligations may be unmatured. The Lenders agree promptly to notify the Borrower after any such set-off and application, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Lenders and their Affiliates under this **Section 4.04** are in addition to other rights and remedies (including other rights of set-off) that the Lenders and their Affiliates may have.

(b) **Exercise of Rights Not Required**. Nothing contained herein shall require the Lenders to exercise any such right or shall affect the right of the Lenders to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of Borrower.

SECTION 5
YIELD PROTECTION, ETC.

5.01 Additional Costs.

(a) **Change in Requirements of Law Generally**. If, on or after the date hereof, the adoption of any Requirement of Law, or any change in any Requirement of Law, or any change in the interpretation or administration thereof by any court or other Governmental Authority charged with the interpretation or administration thereof, or compliance by any of the Lenders (or its lending office) with any request or directive (whether or not having the force of law) of any such Governmental Authority, shall impose, modify or deem applicable any reserve (including any such requirement imposed by the Board of Governors of the Federal Reserve System), special deposit, contribution, insurance assessment or similar requirement, in each case that becomes effective after the date hereof, against assets of, deposits with or for the account of, or credit extended by, a Lender (or its lending office) or shall impose on a Lender (or its lending office) any other condition affecting the Loans or the Commitment, and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining the Loans, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or any other Loan Document, by an amount deemed by such Lender to be material (other than with respect to Taxes), then the Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender for such increased cost or reduction.

(b) **Change in Capital Requirements**. If a Lender shall have determined that, on or after the date hereof, the adoption of any Requirement of Law regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or any request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, in each case that becomes effective after the date hereof, has or would have the effect of reducing the rate of return on capital of a Lender (or its parent) as a consequence of a Lender's obligations hereunder or the Loans to a level below that which a Lender (or its parent) could have achieved but for such adoption, change, request or directive by an amount reasonably deemed by it to be material, then the Borrower shall pay to such Lender on

demand such additional amount or amounts as will compensate such Lender (or its parent) for such reduction.

(c) **Notification by Lender**. The Lenders will promptly notify the Borrower of any event of which it has knowledge, occurring after the date hereof, which will entitle a Lender to compensation pursuant to this **Section 5.01**. Before giving any such notice pursuant to this **Section 5.01(c)** such Lender shall designate a different lending office if such designation (x) will, in the reasonable judgment of such Lender, avoid the need for, or reduce the amount of, such compensation and (y) will not, in the reasonable judgment of such Lender, be materially disadvantageous to such Lender. A certificate of the Lender claiming compensation under this **Section 5.01**, setting forth the additional amount or amounts to be paid to it hereunder, shall be conclusive and binding on the Borrower in the absence of manifest error.

(d) Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) 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 constitute a change in Requirements of Law for all purposes of this **Section 5**, regardless of the date enacted, adopted or issued.

(e) Notwithstanding anything herein to the contrary, no amounts shall be payable by the Borrower under this **Section 5** if the Loan is assigned to a Lender (or is originated by a Lender) whose status as a Lender, whether as a Foreign Lender or because the structure of the Lender, is different than that of either Capital Royalty Partners II L.P., CRPPF, CRPC or CRPPFC and such amounts would not be payable on the date hereof if such Lender had been Capital Royalty Partners II L.P., CRPPF, CRPC or CRPPFC.

5.02 Reserved.

5.03 Illegality. Notwithstanding any other provision of this Agreement, in the event that on or after the date hereof the adoption of or any change in any Requirement of Law or in the interpretation or application thereof by any competent Governmental Authority shall make it unlawful for a Lender or its lending office to make or maintain the Loans (and, in the opinion of such Lender, the designation of a different lending office would either not avoid such unlawfulness or would be disadvantageous to such Lender), then such Lender shall promptly notify the Borrower thereof following which (a) the Lender's Commitment shall be suspended until such time as such Lender may again make and maintain the Loans hereunder and (b) if such Requirement of Law shall so mandate, the Loans shall be prepaid by the Borrower on or before such date as shall be mandated by such Requirement of Law in an amount equal to the Redemption Price applicable on the date of such prepayment in accordance with **Section 3.03(a)**.

5.04 Reserved.

5.05 Taxes.

(a) **Payments Free of Taxes**. Any and all payments by or on account of any Obligation shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law requires the deduction or withholding of any Tax from any such payment by an Obligor, then such Obligor shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by such Obligor 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**) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) **Payment of Other Taxes by the Borrower**. The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of each Lender, timely reimburse it for, Other Taxes.

(c) **Evidence of Payments**. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this **Section 5**, the Borrower shall deliver to each Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment.

(d) **Indemnification**. The Borrower shall reimburse and indemnify each Recipient, within 10 days after written 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**) 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 Lender shall be conclusive absent manifest error.

(e) **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 timely deliver to the Borrower such properly completed and executed documentation reasonably requested by the Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender shall deliver such other documentation prescribed by applicable law as reasonably requested by the Borrower as will enable the Borrower 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 5.05(e)(ii)(A)**, **(B) (C) or (D)**) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that Borrower is a U.S. Person:

(A) any Lender that is a U.S. Person shall deliver to the Borrower 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), executed originals of IRS Form W-9 (or successor form) certifying that such Lender is exempt from U.S. Federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower (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), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN (or successor form) establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN (or successor form) establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed originals of IRS Form W-8ECI (or successor form);

(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 D** 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 originals of IRS Form W-8BEN; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY (or successor form), accompanied by IRS Form W-8ECI (or successor form), IRS Form W-8BEN (or successor form), a U.S. Tax Compliance Certificate, IRS Form W-9 (or successor form), 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 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 (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), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary

documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made; and

(D) any Foreign Lender shall deliver to the Borrower any forms and information necessary to establish that the Foreign Lender is not subject to withholding tax under FATCA.

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 in writing of its legal inability to do so.

(f) **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** (including by the payment of additional amounts pursuant to this **Section 5**), 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** 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 (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 **Section 5.05(f)**, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this **Section 5.05(f)** the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This **Section 5.05(f)** 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.

(g) **Mitigation Obligations**. If the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or to any Governmental Authority for the account of any Lender pursuant to **Section 5.01** or this **Section 5.05**, then such Lender shall (at the request of the Borrower) use commercially reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign and delegate its rights and obligations hereunder to another of its offices, branches or Affiliates if, in the sole reasonable judgment of such Lender, such designation or assignment and delegation would (i) eliminate or reduce amounts payable pursuant to **Section 5.01** or this **Section 5.05**, as the case may be, in the future, (ii) not subject such Lender to any unreimbursed cost or expense and (iii) 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 and delegation.

SECTION 6
CONDITIONS PRECEDENT

6.01 Conditions to Initial Borrowing. The obligation of each Lender to make a Loan as part of the first Borrowing hereunder shall not become effective until the following conditions precedent shall have been satisfied or waived in writing by the Majority Lenders:

(a) **Outstanding Obligations under Existing Term Loans**. All outstanding interest, fees, costs, reimbursable expenses and indemnification obligations accruing or arising under or in connection with the Existing Term Loans which have been identified by the Lenders to Borrower on or prior to the Closing Date shall have been repaid by the Obligors.

(b) **Amount of Initial Borrowing**. The amount of such Borrowing shall equal $30,000,000**.**

(c) **No Other Secured Debt**. On the Closing Date, no Obligor shall have any secured Indebtedness outstanding or available to be drawn, other than under this Agreement, the New Tranche Term Loan Agreement, and under any Permitted Indebtedness.

(d) **Terms of Material Agreements, Etc**. Lenders shall be satisfied reasonably with the terms and conditions of all of the Obligors' Material Agreements set forth on **Schedule 7.14** hereto.

(e) **No Law Restraining Transactions**. No applicable law or regulation shall restrain, prevent or, in the reasonable judgment of the Lenders, impose materially adverse conditions upon the Transactions.

(f) **Payment of Fees**. The Obligors shall have paid or caused to be paid the financing fee required pursuant to **Section 2.03** and all other costs and expenses of the Lenders required pursuant to **Section 12.03** which have been invoiced on or prior to the Closing Date in connection with the preparation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby.

(g) **Updated Lien Searches**. Lenders shall be satisfied with updated Lien searches prior to the Closing Date showing that no Liens exist on the Collateral other than Permitted Liens.

(h) **Documentary Deliveries**. The Lenders shall have received the following documents, each of which shall be in form and substance satisfactory to the Lenders:

(i) **Agreement**. This Agreement and the New Tranche Term Loan Agreement duly executed and delivered by the Borrower and each of the other parties hereto.

(ii) **Security Documents**.

(A) The Security Agreement, duly executed and delivered by each of the Obligors with annexes updated as of the date hereof, shall remain in full force and effect;

(B) Each of the Short-Form IP Security Agreements, duly executed and delivered by the applicable Obligor, shall remain in full force and effect;

(C) Evidence of filing of UCC-1 financing statements against each Obligor in its jurisdiction of formation or incorporation, as the case may be;

(D) Evidence of filing of each of the Short-Form IP Security Agreements in the United States Patent and Trademark Office; and

(E) Without limitation, all other documents and instruments reasonably required to perfect the Lenders' Lien on, and security interest in, the Collateral required to be delivered on or prior to the Closing Date (including delivery of any capital stock certificates and undated stock powers executed in blank) shall have been duly executed and delivered and remain in full force and effect, and shall create in favor of the Lenders, a perfected Lien on, and security interest in, the Collateral, subject to no Liens other than Permitted Liens.

(iii) **Intercreditor Agreement**. The Amended and Restated Intercreditor Agreement, dated as of the date hereof, relating to the Permitted Priority Debt, duly executed and delivered by the New Tranche Term Loan Lenders, the Lenders hereto, and Silicon Valley Bank.

(iv) **Warrants**. The Warrants, duly executed and delivered by Borrower and issued in connection with the Existing Term Loan Agreement, shall remain in full force and effect.

(v) **Notes**. Any Notes requested in accordance with **Section 2.04**.

(vi) **Approvals**. Certified copies of all material licenses, consents, authorizations and approvals of, and notices to and filings and registrations with, any Governmental Authority (including all foreign exchange approvals), and of all third-party consents and approvals, necessary in connection with the making and performance by the Obligors of the Loan Documents and the Transactions.

(vii) **Corporate Documents**. Certified copies (as of a recent date) of the constitutive documents of each Obligor (if publicly available in such Obligor's jurisdiction of formation) and of resolutions of the Board of Directors (or shareholders, if applicable) of each Obligor authorizing the making and performance by it of the Loan Documents to which it is a party.

(viii) **Incumbency Certificate**. A certificate of each Obligor as to the authority, incumbency and specimen signatures of the persons who have executed the Loan Documents and any other documents in connection herewith on behalf of the Obligors.

(ix) **Officer's Certificate**. A certificate, dated the Closing Date and signed by the President, a Vice President or a financial officer of Borrower, confirming compliance with the conditions set forth in **Section 6.02**.

(x) **Opinions of Counsel**. A favorable opinion, dated the Closing Date, of counsel to each Obligor in form acceptable to the Lenders and their counsel.

(xi) **Insurance**. Certificates of insurance evidencing the existence of commercial liability and property loss insurance required to be maintained by the Borrower pursuant to **Section 8.05** and the designation of the Lenders as the loss payees or additional named insured, as the case may be, thereunder.

(xii) **Capital Royalty Intercreditor Agreement**. The Capital Royalty Intercreditor Agreement, duly executed and delivered by the New Tranche Term Loan Lenders and the Lenders hereto.

6.02 Conditions to Each Borrowing. The obligation of each Lender to make a Loan as part of any Borrowing hereunder (including the first Borrowing) is also subject to satisfaction of the following further conditions precedent on the applicable Borrowing Date:

(a) **No Default; Representations and Warranties**. Both immediately prior to the making of such Loan and after giving effect thereto and to the intended use thereof:

(i) no Default shall have occurred and be continuing; and

(ii) the representations and warranties made by the Borrower in **Section 7**, shall be true on and as of the Borrowing Date and immediately after giving effect to the application of the proceeds of the Borrowing with the same force and effect as if made on and as of such date, except that the representation regarding representations and warranties that refer to a specific earlier date shall be that they were true on such earlier date.

(b) **Financing Fee**. Except in the case of any PIK Loan, each Lender shall have received its portion of the fees payable pursuant to **Section 2.03**.

Each Borrowing shall constitute a certification by the Borrower to the effect that the conditions set forth in this **Section 6.02** have been fulfilled as of the applicable Borrowing Date.

SECTION 7
REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lenders that:

7.01 Power and Authority. Each of the Borrower and its Subsidiaries (a) is duly organized and validly existing under the laws of its jurisdiction of organization, (b) has all requisite corporate or other power, and has all material governmental licenses, authorizations, consents and approvals necessary to own its assets and carry on its business as now being or as proposed to be conducted except to the extent that failure to have the same could not reasonably be expected to have a Material Adverse Effect, (c) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure so to qualify could (either individually or in the aggregate) reasonably be expected to result in a Material Adverse Effect, (d) has full power, authority and legal right to make and perform each of the Loan Documents to which it is a party and, in the case of the Borrower, to borrow the Loans hereunder and (e) is in material

compliance with all applicable Laws to which it is subject and all Material Agreements to which it is a party.

7.02 Authorization; Enforceability. The Transactions are within each Obligor's corporate powers and have been duly authorized by all necessary corporate and, if required, by all necessary shareholder action. This Agreement has been duly executed and delivered by each Obligor and constitutes, and each of the other Loan Documents to which it is a party when executed and delivered by such Obligor will constitute, a legal, valid and binding obligation of such Obligor, enforceable against each Obligor in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

7.03 Governmental and Other Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any third party, except for (i) such as have been obtained or made and are in full force and effect, (ii) filings and recordings in respect of the Liens created pursuant to the Security Documents, (iii) as disclosed in **Schedule 7.03**, and (iv) such consents or approvals the absence of which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, (b) will not violate any applicable law or regulation or the charter, bylaws or other organizational documents of Borrower and its Subsidiaries or any order of any Governmental Authority, other than any such violations that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, (c) will not violate or result in a default under any Material Agreement, or give rise to a right thereunder to require any payment to be made by any such Person, and (d) except for the Liens created pursuant to the Security Documents, will not result in the creation or imposition of any Lien on any asset of Borrower and its Subsidiaries.

7.04 Financial Statements; Material Adverse Change.

(a) **Financial Statements**. The Borrower has heretofore furnished to the Lenders certain financial statements as provided for in **Section 8.01**. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the previously-delivered statements of the type described in **Section 8.01(b)**. Neither the Borrower nor any of its Subsidiaries has any material contingent liabilities or unusual forward or long-term commitments not disclosed in the aforementioned financial statements and which in any case is material in relation to the business, operations, properties, assets or condition (financial or otherwise) of Borrower and its Subsidiaries taken as a whole.

(b) **No Material Adverse Change**. Since December 31, 2013, there has been no Material Adverse Change.

7.05 Properties.

(a) **Property Generally**. Each Obligor has good and marketable fee simple title to, or valid leasehold interests in, all its real and personal property material to its business, subject only to Permitted Liens and except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) **Intellectual Property**. The Obligors represent and warrant to the Lenders as of the date hereof as follows, and the Obligors acknowledge that the Lenders are relying on such representations and warranties in entering into this Agreement:

(i) **Schedule 7.05(b)** contains:

(A) a complete and accurate list, as of March 19, 2014, of all applied for or registered Patents, including the jurisdiction and patent number;

(B) a complete and accurate list, as of March 19, 2014, of all applied for or registered Trademarks, including the jurisdiction, trademark application or registration number and the application or registration date; and

(C) a complete and accurate list, as of March 19, 2014, of all applied for or registered Copyrights;

(ii) Each Obligor is the absolute beneficial owner of all right, title and interest in and to Material Intellectual Property listed on **Schedule 7.05(c)** as owned by such Obligor with good and marketable title, free and clear of any Liens of any kind whatsoever other than Permitted Liens. Without limiting the foregoing, and except as set forth in **Schedule 7.05(b)**:

(A) other than with respect to the Material Agreements and licenses implied by the sale of a product to end retail users, or as permitted by **Section 9.09** below, the Obligors have not transferred ownership of Material Intellectual Property listed on **Schedule 7.05(c)** as owned by such Obligors, in whole or in part, to any other Person who is not an Obligor;

(B) other than (i) the Material Agreements, (ii) customary restrictions in in-bound licenses of Intellectual Property and non-disclosure agreements, or (iii) as would have been or is permitted by **Section 9.09** below, there are no judgments, covenants not to sue, permits, grants, licenses, Liens (other than Permitted Liens), or other agreements or arrangements relating to Borrower's Material Intellectual Property, including any development, submission, services, research, license or support agreements, which bind, obligate or otherwise restrict the Obligors in any manner that would reasonably be expected to have a Material Adverse Effect;

(C) the use of any of the Obligor Intellectual Property in the business of the Borrower as currently conducted or as currently contemplated to be conducted, to the best of Borrower's Knowledge, does not breach, violate, infringe or interfere with or constitute a misappropriation of any valid rights arising under any Intellectual Property of any other Person;

(D) there are no pending or, to Borrower's Knowledge, threatened in writing Claims against the Obligors asserted by any other Person relating to the Obligor Intellectual Property owned by or exclusively licensed to Obligors, including any Claims of adverse ownership, invalidity, infringement, misappropriation, violation or other opposition to or conflict with such Intellectual Property, except as could not reasonably be expected to have a Material Adverse Effect; the Obligors have not received any written notice from any Person that the Borrower's business, the use of the Obligor Intellectual Property in the business of the Borrower as currently conducted, or the manufacture, use or sale of any product or the performance of any service by the Borrower infringes upon, violates or constitutes a misappropriation of, or may infringe upon, violate or constitute a misappropriation of, or otherwise interfere with, any other Intellectual Property of any other Person;

(E) the Obligors have no Knowledge that the Obligor Intellectual Property owned by or exclusively licensed to Obligors is being infringed, violated, misappropriated or otherwise used by any other Person without the express authorization of the Obligors. Without limiting the foregoing, the Obligors have not put any other Person on notice of actual or potential infringement, violation or misappropriation of any of the Material Intellectual Property owned by or exclusively licensed to Obligors; the Obligors have not initiated the enforcement of any Claim with respect to any of the Obligor Intellectual Property owned by or exclusively licensed to Obligors;

(F) all relevant current and former employees and contractors of Borrower have executed written confidentiality and invention assignment Contracts with Borrower that irrevocably assign to Borrower or its designee all of their rights to any Inventions relating to Borrower's business that are conceived or reduced to practice by such employees within the scope of their employment or by such contractors within the scope of their contractual relationship with Borrower, to the extent permitted by applicable law;

(G) to the Knowledge of the Obligors, the Obligor Intellectual Property is all the Intellectual Property necessary for the operation of the Borrower's business as it is currently conducted or as currently contemplated to be conducted, except for such Intellectual Property the absence of which could not reasonably be expected to have a Material Adverse Effect;

(H) the Obligors have taken reasonable precautions to protect the secrecy, confidentiality and value of its Material Intellectual Property consisting of trade secrets and confidential information, except as could not reasonably be expected to have a Material Adverse Effect.

(I) each Obligor has delivered or otherwise made available to the Lenders accurate and complete copies of all Material Agreements relating to the Obligor Intellectual Property;

(J) there are no pending or, to the Knowledge of any of the Obligors, threatened in writing Claims against the Obligors asserted by any other Person relating to the Material Agreements, including any Claims of breach or default under such Material Agreements, except as could not reasonably be expected to have a Material Adverse Effect;

(iii) With respect to the Material Intellectual Property owned by or for which prosecution is controlled by Obligors consisting of issued Patents, except as set forth in **Schedule 7.05(b)**, and without limiting the representations and warranties in **Section 7.05(b)(ii)**:

(A) each of the issued claims in such Patents, to Borrower's Knowledge, is valid and enforceable;

(B) the inventors listed in such Patents have executed written Contracts with the Borrower or its predecessor-in-interest that properly and irrevocably assigns to Borrower or its predecessor-in-interest all of their rights to any of the Inventions claimed in such Patents to the extent permitted by applicable law;

(C) none of the Patents, or the Inventions claimed in them, have been dedicated to the public except as a result of intentional decisions made by the applicable Obligor;

(D) to Borrower's Knowledge, all prior art material to such Patents was adequately disclosed to or considered by the respective patent offices during prosecution of such Patents to the extent required by applicable law or regulation;

(E) subsequent to the issuance of such Patents, neither the Borrower nor any Subsidiary Guarantors or their predecessors in interest, have filed any disclaimer or filed any other voluntary reduction in the scope of the Inventions claimed in such Patents;

(F) no subject matter of such Patents, to Borrower's Knowledge, is subject to any competing conception claims of subject matter of any patent applications or patents of any third party and have not been the subject of any interference, re-examination or opposition proceedings, nor are the Obligors aware of any basis for any such interference, re-examination or opposition proceedings;

(G) no such Patents, to Borrower's Knowledge, have ever been finally adjudicated to be invalid, unpatentable or unenforceable for any reason in any administrative, arbitration, judicial or other proceeding, and, with the exception of publicly available documents in the applicable Patent Office recorded with respect to any Patents, the Obligors have not received any written notice asserting that such Patents are invalid, unpatentable or unenforceable; if any of such Patents is terminally disclaimed to another patent or patent application, all patents and patent applications subject to such terminal disclaimer are included in the Collateral;

(H) the Obligors have not received an opinion which concludes that a challenge to the validity or enforceability of any of such Patents is more likely than not to succeed;

(I) the Obligors have no Knowledge that they or any prior owner of such Patents or their respective agents or representatives have engaged in any conduct, or omitted to perform any necessary act, the result of which would invalidate or render unpatentable or unenforceable any such Patents; and

(J) all maintenance fees, annuities, and the like due or payable on the Patents have been timely paid or the failure to so pay was the result of an intentional decision by the applicable Obligor or would not reasonably be expected to result in a Material Adverse Effect.

(iv) none of the foregoing representations and statements of fact contains any untrue statement of material fact or omits to state any material fact necessary to make any such statement or representation not misleading to a prospective Lender with respect to the Material Intellectual Property; provided that this representation and warranty in this subsection (iv) is only as to the Knowledge of the Borrower with respect to any Material Intellectual Property licensed to any of the Obligors.

(c) **Material Intellectual Property**. **Schedule 7.05(c)** contains a complete and accurate list of the Obligor Intellectual Property the loss of which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect upon the Borrower's business with an indication as to whether the applicable Obligor owns or has an exclusive or non-exclusive license to such Obligor Intellectual Property.

7.06 No Actions or Proceedings.

(a) **Litigation**. There is no litigation, investigation or proceeding pending or, to the best of the Borrower's Knowledge, threatened with respect to the Borrower and its Subsidiaries by or before any Governmental Authority or arbitrator (i) that either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect, except as specified in **Schedule 7.06** or (ii) that involves this Agreement or the Transactions.

(b) **Environmental Matters**. The operations and Property of Borrower and its Subsidiaries comply with all applicable Environmental Laws, except to the extent the failure to so comply (either individually or in the aggregate) could not reasonably be expected to have a Material Adverse Effect.

(c) **Labor Matters**. The Borrower has not engaged in unfair labor practices and there are no material labor actions or disputes involving the employees of the Borrower.

7.07 Compliance with Laws and Agreements. Each of the Obligors is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

7.08 Taxes. Except as set forth on **Schedule 7.08**, each of the Obligors has timely filed or caused to be filed all tax returns and reports required to have been filed and has paid or caused to be paid all taxes required to have been paid by it, except taxes that are being contested in good faith by appropriate proceedings and for which such Obligor has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

7.09 Full Disclosure. The Borrower has disclosed to the Lenders all Material Agreements to which any Obligor is subject. None of the reports, financial statements, certificates or other information furnished by or on behalf of the Obligors to the Lenders in connection with the negotiation of this Agreement and the other Loan Documents or delivered hereunder or thereunder (as modified or supplemented by other information so furnished) contains any material misstatement of 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, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

7.10 Regulation.

(a) **Investment Company Act**. Neither Borrower nor any of its Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

(b) **Margin Stock**. Neither Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock, and no part of the proceeds of the Loans will be used to buy or carry any Margin Stock in violation of Regulation T, U or X.

7.11 Solvency. Borrower is and, immediately after giving effect to the Borrowing and the use of proceeds thereof will be, Solvent.

7.12 Subsidiaries. **Schedule 7.12** is a complete and correct list of all Subsidiaries of the Borrower as of the date hereof, each such Subsidiary is duly organized and validly existing under the jurisdiction of its organization shown in said **Schedule 7.12**, and the percentage ownership by Borrower of each such Subsidiary is as shown in said **Schedule 7.12**.

7.13 Indebtedness and Liens. **Schedule 7.13(b)-1** is a complete and correct list of all Indebtedness of each Obligor outstanding as of the date hereof. **Schedule 7.13(b)-2** is a complete and correct list of all Liens granted by the Borrower and other Obligors with respect to their respective Property and outstanding as of the date hereof.

7.14 Material Agreements. **Schedule 7.14** is a complete and correct list of (i) each Material Agreement existing on the date hereof and (ii) each agreement creating or evidencing any Material Indebtedness. No Obligor is in material default under any such Material Agreement or agreement creating or evidencing any Material Indebtedness. Except as otherwise disclosed on **Schedule 7.14**, all Material Agreements that are material vendor purchase agreements and provider contracts of the Obligors are in full force and effect without material modification from the form in which the same were disclosed to the Lenders.

7.15 Restrictive Agreements. None of the Obligors are subject to any indenture, agreement, instrument or other arrangement of the type described in **Section 9.11**, except for any indenture,

agreement, instrument or other arrangement described on **Schedule 7.15** or otherwise permitted under **Section 9.11** (each, a "***Permitted Restrictive Agreement***").

7.16 Real Property.

(a) **Generally**. Neither Borrower nor any of its Subsidiaries owns or leases (as tenant thereof) any real property, except as described on **Schedule 7.16**.

(b) **Borrower Lease**.

(i) Borrower has delivered a true, accurate and complete copy of each Borrower Lease to Lenders.

(ii) Each Borrower Lease is in full force and effect and no material default has occurred under such Borrower Lease and, to the Knowledge of Borrower, there is no existing condition which, but for the passage of time or the giving of notice, could reasonably be expected to result in a material default under the terms of such Borrower Lease.

(iii) Borrower is the tenant under each Borrower Lease and has not transferred, sold, assigned, conveyed, disposed of, mortgaged, pledged, hypothecated, or encumbered any of its interest in, such Borrower Lease.

7.17 Pension Matters. **Schedule 7.17** sets forth, as of the date hereof, a complete and correct list of, and that separately identifies, (a) all Title IV Plans, (b) all Multiemployer Plans and (c) all material Benefit Plans. Each Benefit Plan, and each trust thereunder, intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Requirements of Law so qualifies. Except for those that could not, in the aggregate, have a Material Adverse Effect, (x) each Benefit Plan is in compliance with applicable provisions of ERISA, the Code and other Requirements of Law, (y) there are no existing or pending (or to the Knowledge of any Obligor or Subsidiary thereof, threatened) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan to which any Obligor or Subsidiary thereof incurs or otherwise has or could have an obligation or any liability or Claim and (z) no ERISA Event is reasonably expected to occur. Borrower and each of its ERISA Affiliates has met all applicable requirements under the ERISA Funding Rules with respect to each Title IV Plan, and no waiver of the minimum funding standards under the ERISA Funding Rules has been applied for or obtained. As of the most recent valuation date for any Title IV Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least 60%, and neither Borrower nor any of its ERISA Affiliates knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage to fall below 60% as of the most recent. As of the date hereof, no ERISA Event has occurred in connection with which obligations and liabilities (contingent or otherwise) remain outstanding. No ERISA Affiliate would have any Withdrawal Liability as a result of a complete withdrawal from any Multiemployer Plan on the date this representation is made.

7.18 Collateral; Security Interest. Each Security Document is effective to create in favor of the Lenders a legal, valid and enforceable security interest in the Collateral subject thereto, which security interests are first-priority, subject to Permitted Liens.

7.19 Regulatory Approvals. Borrower and its Subsidiaries hold, and will continue to hold, either directly or through licensees and agents, all material Regulatory Approvals, licenses, permits and similar governmental authorizations of a Governmental Authority necessary or required for Borrower and its Subsidiaries to conduct their operations and business in the manner currently conducted.

7.20 Small Business Concern. The Borrower's primary business activity does not involve, directly or indirectly, providing funds to others (other than to its Subsidiaries), the purchase or discounting of debt obligations, factoring or long term leasing of equipment with no provision for maintenance or repair, and the Borrower is not classified under Major Group 65 (Real Estate) or Industry No. 1531 (Operative Builders) of the SIC Manual.

7.21 Update of Schedules. **Schedules 7.05(b)** (in respect of the lists of Patents, Copyrights and Trademarks under **Section 7.05(b)(i)** only), **7.05(c)**, **7.06**, and **7.16**, may be updated by Borrower prior to each Borrowing Date to insure the continued accuracy of such Schedule as of such Borrowing Date, by Borrower providing to the Lenders, in writing (including via electronic means), a revised version of such Schedule in accordance with the provisions of **Section 12.02**. Each such updated Schedule shall be effective immediately upon the receipt thereof by the Lenders.

SECTION 8
AFFIRMATIVE COVENANTS

Borrower covenants and agrees with the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than the Warrant Obligations) have been paid in full indefeasibly in cash:

8.01 Financial Statements and Other Information. The Borrower will furnish to the Lenders:

(a) as soon as available and in any event within 5 days following the date Borrower files Form 10-Q with the SEC, the consolidated and consolidating balance sheets of the Obligors as of the end of such quarter, and the related consolidated and consolidating statements of income, shareholders' equity and cash flows of Borrower and its Subsidiaries for such quarter and the portion of the fiscal year through the end of such quarter, prepared in accordance with GAAP consistently applied, subject to changes resulting from normal, year-end audit adjustments and except for the absence of notes, all in reasonable detail and setting forth in comparative form the figures for the corresponding period in the preceding fiscal year;

(b) as soon as available and in any event within 5 days following the date Borrower files Form 10-K with the SEC, the consolidated and consolidating balance sheets of Borrower and its Subsidiaries as of the end of such fiscal year, and the related consolidated and consolidating statements of income, shareholders' equity and cash flows of Borrower and its

Subsidiaries for such fiscal year, prepared in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the previous fiscal year, accompanied by a report and opinion thereon of Ernst & Young LLP or another firm of independent certified public accountants of recognized national standing reasonably acceptable to the Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any qualification or exception as to the scope of such audit;

(c) together with the financial statements required pursuant to **Sections 8.01(a)** and **(b)**, a compliance certificate of a Responsible Officer as of the end of the applicable accounting period (which delivery may, unless a Lender requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes) in the form of **Exhibit E** (a "***Compliance Certificate***") including details of any issues that are material that are raised by auditors;

(d) promptly upon receipt thereof, copies of all letters of representation signed by an Obligor to its auditors and copies of all auditor reports delivered for each fiscal quarter;

(e) as soon as available following the end of each fiscal year, a consolidated condensed financial forecast for Borrower and its Subsidiaries for the following three fiscal years (inclusive of the then current fiscal year), including forecasted consolidated condensed balance sheets, statements of income, and cash flows of Borrower and its Subsidiaries; *provided, that* such financial forecasts shall be provided for informational purposes only and Lenders acknowledge that Borrower makes no representations or warranties concerning the accuracy or completeness of such financial forecasts other than that Borrower has prepared such financial forecasts in good faith; and, *provided further*, that such financial forecasts may include material, non-public information and that Lenders must comply with applicable securities laws in connection with the receipt of any such information;

(f) promptly, and in any event within five Business Days after receipt thereof by an Obligor thereof, copies of each notice or other correspondence received from any securities regulator or exchange to the authority of which Borrower may become subject from time to time concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of such Obligor;

(g) the information regarding insurance maintained by Borrower and its Subsidiaries as required under **Section 8.05**;

(h) within 5 days of filing, provide access (via posting and/or links on Borrower's website) to all reports on Form 10-K and Form 10-Q filed with the SEC, any Governmental Authority succeeding to any or all of the functions of the SEC or with any national securities exchange; and within 5 days of filing, provide notice and access (via posting and/or links on Borrower's website) to all reports on Form 8-K filed with the SEC, and copies of (or access to, via posting and/or links on Borrower's website) all other reports, proxy statements and other materials filed by Borrower with the SEC, any Governmental Authority succeeding to any of the functions of the SEC or with any national securities exchange; and

(i) promptly following Lenders' request at any time, proof of Borrower's compliance with **Section 10.03**.

Documents required to be delivered pursuant to **Section 8.01(a)** or **(b)** or referred to in **Section 8.02(h)** (to the extent any such documents are included in materials otherwise filed with the SEC) 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; (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender has access (whether a commercial, third party website or whether sponsored by the Lenders); or (iii) on which the Borrower provides notice of filing of such documents with the SEC by electronic mail message to the Lenders in accordance with **Section 12.02**.

8.02 Notices of Material Events. The Borrower will furnish to the Lenders written notice of the following promptly after a Responsible Officer first learns of the existence of:

(a) the occurrence of any Default;

(b) notice of the occurrence of any event with respect to its property or assets resulting in a Loss aggregating $500,000 (or the Equivalent Amount in other currencies) or more resulting in a Material Adverse Effect;

(c) (A) any proposed acquisition of stock, assets or property by any Obligor that would reasonably be expected to result in environmental liability under Environmental Laws, and (B)(1) spillage, leakage, discharge, disposal, leaching, migration or release of any Hazardous Material required to be reported to any Governmental Authority under applicable Environmental Laws, and (2) all actions, suits, claims, notices of violation, hearings, investigations or proceedings pending, or to the best of Borrower's Knowledge, threatened against or affecting Borrower or any of its Subsidiaries or with respect to the ownership, use, maintenance and operation of their respective businesses, operations or properties, relating to Environmental Laws or Hazardous Material;

(d) the assertion of any environmental matter by any Person against, or with respect to the activities of, Borrower or any of its Subsidiaries and any alleged violation of or non-compliance with any Environmental Laws or any permits, licenses or authorizations which could reasonably be expected to (either individually or in the aggregate) result in a Material Adverse Effect;

(e) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting Borrower or any of its Affiliates that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect, including, in any event, any filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting Borrower or any of its Affiliates;

(f) (i) on or prior to any filing by any ERISA Affiliate of any notice of intent to terminate any Title IV Plan, a copy of such notice and (ii) promptly, and in any event within ten

days, after any Responsible Officer of any ERISA Affiliate knows or has reason to know that a request for a minimum funding waiver under Section 412 of the Code has been filed with respect to any Title IV Plan or Multiemployer Plan, a notice (which may be made by telephone if promptly confirmed in writing) describing such waiver request and any action that any ERISA Affiliate proposes to take with respect thereto, together with a copy of any notice filed with the PBGC or the IRS pertaining thereto;

(g) (i) the termination of any Material Agreement, other than the expiration of such agreement in accordance with its terms; (ii) the entering into of any new Material Agreement by an Obligor; or (iii) any material amendment to a Material Agreement;

(h) the reports and notices as required by the Security Documents;

(i) within 30 days of the date thereof, or, if earlier, on the date of delivery of any financial statements pursuant to **Section 8.01**, notice of any material change in accounting policies or financial reporting practices by the Obligors (which requirement will be deemed satisfied by the description thereof in a Form 10-K, Form 10-Q or Form 8-K filed with the SEC);

(j) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect;

(k) concurrently with the delivery of financial statements under **Section 8.01(b)**, the creation or other acquisition of any Intellectual Property by Borrower or any Subsidiary after the date hereof and during such prior fiscal year which is registered or becomes registered or the subject of an application for registration with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable, or with any other equivalent foreign Governmental Authority;

(l) any change to the Borrower's and each Subsidiary Guarantor's ownership of Deposit Accounts, Securities Accounts and Commodity Accounts, by delivering to Lenders an updated Annex 7 to the Security Agreement setting forth a complete and correct list of all such accounts as of the date of such change; or

(m) such other information respecting the operations, properties, business or condition (financial or otherwise) of the Obligors (including with respect to the Collateral) as the Majority Lenders may from time to time reasonably request.

Each notice delivered under this **Section 8.02** shall be accompanied by a statement of a financial officer or other executive officer of Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

8.03 Existence; Conduct of Business. Borrower will, and will cause each of its Subsidiaries to, do or cause to be done all things reasonably necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business; *provided that* the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under **Section 9.03**.

8.04 Payment of Obligations. Borrower will, and will cause each of its Subsidiaries to, pay and discharge its obligations, including (i) all taxes, fees, assessments and governmental charges or levies imposed upon it or upon its properties or assets prior to the date on which penalties attach thereto, except to the extent such taxes, fees, assessments or governmental charges or levies, or such claims are being contested in good faith by appropriate proceedings and are adequately reserved against in accordance with GAAP; (ii) all lawful claims which, if unpaid, would by law become a Lien upon its property not constituting a Permitted Lien, except to the extent such claims are being contested in good faith by appropriate proceedings and are adequately reserved against in accordance with GAAP; and (iii) all Indebtedness other than Permitted Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

8.05 Insurance. Borrower will, and will cause each of its Subsidiaries to, maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations. Upon the request of the Majority Lenders, Borrower shall furnish the Lenders from time to time with full information as to the insurance carried by it and, if so requested, copies of all such insurance policies. Borrower also shall furnish to the Lenders from time to time upon the request of the Majority Lenders a certificate from the Borrower's insurance broker or other insurance specialist stating that all premiums then due on the policies relating to insurance on the Collateral have been paid and that such policies are in full force and effect. The Borrower shall use commercially reasonable efforts to ensure, or cause others to ensure, that all insurance policies required under this **Section 8.05** shall provide that they shall not be terminated or cancelled nor shall any such policy be materially changed in a manner adverse to the Borrower without at least 30 days' prior written notice to the Borrower and the Lenders. Receipt of notice of termination or cancellation of any such insurance policies or reduction of coverages or amounts thereunder shall entitle the Lenders to renew any such policies, cause the coverages and amounts thereof to be maintained at levels required pursuant to the first sentence of this **Section 8.05** or otherwise to obtain similar insurance in place of such policies, in each case at the expense of the Borrower.

8.06 Books and Records; Inspection Rights. Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries are made of all financial dealings and transactions in relation to its business and activities. Borrower will, and will cause each of its Subsidiaries to, permit any representatives designated by the Lender, upon reasonable prior notice, to visit during normal business hours and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times (but not more often than once a year unless an Event of Default has occurred and is continuing).

8.07 Compliance with Laws and Other Obligations. Borrower will, and will cause each of its Subsidiaries to, (i) comply in all material respects with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property (including Environmental Laws) and (ii) comply in all material respects with all terms of Indebtedness and all other Material Agreements, in each case, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

8.08 Maintenance of Properties, Etc.

(a) Borrower shall, and shall cause each of its Subsidiaries to, maintain and preserve all of its properties necessary or useful in the proper conduct of its business in good working order and condition in accordance with the general practice of other Persons of similar character and size, ordinary wear and tear and damage from casualty or condemnation excepted.

(b) Without limiting the generality of clause (a) above, Borrower shall comply with each of the following covenants with respect to each Borrower Lease:

(i) Borrower shall diligently perform and timely observe all of the material terms or those that could result in a termination of the lease, covenants and conditions of each Borrower Lease on the part of Borrower to be performed and observed prior to the expiration of any applicable grace period therein provided and use its reasonable best efforts to preserve and to keep unimpaired and in full force and effect each Borrower Lease.

(ii) Borrower shall promptly notify Lenders of the giving of any written notice by Borrower Landlord to Borrower of any default by Borrower thereunder, and promptly deliver to Lenders a true copy of each such notice. If Borrower shall be in default under any Borrower Lease, Lenders shall have the right (but not the obligation), upon reasonable advance written notice to Borrower, to cause the default or defaults under such Borrower Lease to be remedied and otherwise exercise any and all rights of Borrower under such Borrower Lease, as may be necessary to cure any default and Lenders shall have the right to enter all or any portion of the Property, at such times and in such manner as Lenders reasonably deem necessary, to cure any such default. Without limiting the foregoing, upon any such default, Borrower shall promptly execute, acknowledge and deliver to Lenders such instruments as may reasonably be required of Borrower to permit Lenders to cure any default under such Borrower Lease or permit Lenders to take such other action required to enable Lenders to cure or remedy the matter in default and preserve the security interest of Lenders under the Loan Documents with respect to the Borrower Facility.

(iii) Borrower shall use commercially reasonable efforts to enforce, in a commercially reasonable manner, each material covenant or obligation of the Borrower Landlord in each Borrower Lease in accordance with its terms.

(iv) Borrower, promptly upon learning that Borrower Landlord has failed to perform the material terms and provisions under any Borrower Lease and immediately upon learning of a rejection or disaffirmance or purported rejection or disaffirmance of the Borrower Lease pursuant to any state or federal bankruptcy law, shall notify Lenders thereof.

(v) Borrower shall promptly, after obtaining knowledge of such filing notify Lenders orally of any filing by or against Borrower Landlord under any Borrower Lease of a petition under the Bankruptcy Code or other applicable law. Borrower shall thereafter promptly give written notice of such filing to Lenders, setting forth any material information available to Borrower as to the date of such filing, the court in which such petition was filed, and the relief sought in such filing. Borrower shall promptly deliver to Lenders any and all notices,

summonses, pleadings, applications and other documents received by Borrower in connection with any such petition and any proceedings relating to such petition.

8.09 Licenses. Borrower shall, and shall cause each of its Subsidiaries to, obtain and maintain all licenses, authorizations, consents, filings, exemptions, registrations and other Governmental Approvals necessary in connection with the execution, delivery and performance of the Loan Documents, the consummation of the Transactions or the operation and conduct of its business and ownership of its properties, except where failure to do so could not reasonably be expected to have a Material Adverse Effect.

8.10 Action under Environmental Laws. Borrower shall, and shall cause each of its Subsidiaries to, upon becoming aware of the presence of any Hazardous Materials or the existence of any environmental liability under applicable Environmental Laws with respect to their respective businesses, operations or properties, take all actions, at their cost and expense, as shall be necessary or advisable to investigate and clean up the condition of their respective businesses, operations or properties, including all required removal, containment and remedial actions, and restore their respective businesses, operations or properties to a condition in compliance with applicable Environmental Laws, except to the extent nonaction could not reasonably be expected to have a Material Adverse Effect; and provided, however, that neither Borrower nor any of its Subsidiaries shall be required to undertake any such clean up, removal, containment, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstance in accordance with GAAP.

8.11 Use of Proceeds. The proceeds of the Loans will be used only as provided in **Section 2.05**. No part of the proceeds of the Loans will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board of Governors of the Federal Reserve System, including Regulations T, U and X.

8.12 Certain Obligations Respecting Subsidiaries; Further Assurances.

(a) **Subsidiary Guarantors**. Borrower will take such action, and will cause each of its Subsidiaries to take such action, from time to time as shall be necessary to ensure that all Subsidiaries that are Domestic Subsidiaries of Borrower, and such Foreign Subsidiaries as are required under **Section 8.12(b)**, are "Subsidiary Guarantors" hereunder. Without limiting the generality of the foregoing, in the event that Borrower or any of its Subsidiaries shall form or acquire any new Subsidiary that is a Domestic Subsidiary or a Foreign Subsidiary meeting the requirements of **Section 8.12(b)**, Borrower and its Subsidiaries will:

(i) cause such new Subsidiary to become a "Subsidiary Guarantor" hereunder, and a "Grantor" under the Security Agreement, pursuant to a Guarantee Assumption Agreement;

(ii) take such action or cause such Subsidiary to take such action (including delivering such shares of stock together with undated transfer powers executed in blank) as shall be necessary to create and perfect valid and enforceable first priority (subject to Permitted Liens

permitted under **Section 9.02(c)**) Liens on substantially all of the personal property of such new Subsidiary as collateral security for the obligations of such new Subsidiary hereunder;

(iii) cause the parent of such Subsidiary to execute and deliver a pledge agreement in favor of the Lenders in respect of all outstanding issued shares of such Subsidiary; and

(iv) deliver such proof of corporate action, incumbency of officers, opinions of counsel and other documents as is consistent with those delivered by each Obligor pursuant to **Section 6.01** on the Closing Date or as the Majority Lenders shall have reasonably requested.

(b) **Foreign Subsidiaries**. In the event that, at any time, Foreign Subsidiaries of Borrower have, in the aggregate, (i) total revenues constituting 5% or more of the total revenues of Borrower and its Subsidiaries on a consolidated basis, or (ii) total assets constituting 5% or more of the total assets of Borrower and its Subsidiaries on a consolidated basis, promptly (and, in any event, within 30 days after such time) the Borrower shall cause one or more of such Foreign Subsidiaries to become Subsidiary Guarantors in the manner set forth in **Section 8.12(a)**, such that, after such Subsidiaries become Subsidiary Guarantors, the non-guarantor Foreign Subsidiaries in the aggregate shall cease to have revenues or assets, as applicable, that meet the thresholds set forth in **clauses (i)** and **(ii)** above; *provided that* no Foreign Subsidiary shall be required to become a Subsidiary Guarantor if doing so would result in adverse tax consequences for Borrower and its Subsidiaries, taken as a whole. However, if a Foreign Subsidiary is precluded from becoming a Subsidiary Guarantor as a result of the adverse tax consequences described in the previous sentence, Borrower shall nonetheless pledge 65% of the total number of shares of voting stock of such Foreign Subsidiary to the Lenders to secure the Obligations under this Agreement.

(c) **Further Assurances**. Borrower will, and will cause each of its Subsidiaries to, take such action from time to time as shall reasonably be requested by the Majority Lenders to effectuate the purposes and objectives of this Agreement.

Without limiting the generality of the foregoing, the Borrower will, and will cause each Person that is required to be a Subsidiary Guarantor to, take such action from time to time (including executing and delivering such assignments, security agreements, control agreements and other instruments) as shall be reasonably requested by the Majority Lenders to create, in favor of the Lenders, perfected security interests and Liens in substantially all of the personal property of such Obligor (subject to Permitted Liens) as collateral security for the Obligations; *provided that* any such security interest or Lien shall be subject to the relevant requirements of the Security Documents.

8.13 Termination of Non-Permitted Liens. In the event that Borrower or any of its Subsidiaries shall become aware or be notified by the Lenders of the existence of any outstanding Lien against any Property of Borrower or any of its Subsidiaries, which Lien is not a Permitted Lien, the Borrower shall use its reasonable best efforts to promptly terminate or cause the termination of such Lien.

8.14 Intellectual Property.

(a) Notwithstanding any provision in this Agreement or any other Loan Documents to the contrary, the Lenders are not assuming any liability or obligation of the Borrower, the Subsidiary Guarantors or their Subsidiaries of whatever nature, whether presently in existence or arising or asserted hereafter, except to the extent required under applicable law in connection with any Intellectual Property license agreement of the Borrower, the Subsidiary Guarantors or their Subsidiaries in the event that the Lenders foreclose on such Collateral. All such liabilities and obligations shall be retained by and remain obligations and liabilities of the Obligors, the Subsidiary Guarantors and/or their Subsidiaries as the case may be, except to the extent required under applicable law in connection with any Intellectual Property license agreement of the Borrower, the Subsidiary Guarantors or their Subsidiaries in the event that the Lenders foreclose on such Collateral. Without limiting the foregoing, the Lenders are not assuming and shall not be responsible for any liabilities or Claims of the Borrower, the Subsidiary Guarantors or their Subsidiaries, whether present or future, absolute or contingent and whether or not relating to the Obligors, the Obligor Intellectual Property, and/or the Material Agreements, and the Borrower shall indemnify and save harmless the Lenders from and against all such liabilities, Claims and Liens, except to the extent required under applicable law in connection with any Intellectual Property license agreement of the Borrower, the Subsidiary Guarantors or their Subsidiaries in the event that the Lenders foreclose on such Collateral. Without limiting the foregoing, this Agreement shall not constitute an agreement to assign any Contracts of, or Obligor Intellectual Property to, the Lenders, except to the extent required under applicable law in connection with any Intellectual Property license agreement of the Borrower, the Subsidiary Guarantors or their Subsidiaries in the event that the Lenders foreclose on such Collateral.

(b) In the event that the Obligors acquire Obligor Intellectual Property during the term of this Agreement, then the provisions of this Agreement shall automatically apply thereto and any such Obligor Intellectual Property shall automatically constitute part of the Collateral hereunder, without further action by any party, in each case from and after the date of such acquisition (except that any representations or warranties of any Obligor shall apply to any such Obligor Intellectual Property only from and after the date, if any, subsequent to such acquisition that such representations and warranties are brought down or made anew as provided herein).

8.15 Post-Closing Items.

(a) Borrower shall use commercially reasonable efforts to execute and deliver to the Lenders such duly executed Intellectual Property security agreements, as the Lenders may require with respect to foreign Intellectual Property, and take such other action as the Lenders may reasonably deem necessary or appropriate to duly record or otherwise perfect the security interest created thereunder in that portion of the Collateral consisting of Intellectual Property located outside the United States in the jurisdictions listed on **Schedule 8.15(a)**.

SECTION 9
NEGATIVE COVENANTS

Borrower covenants and agrees with the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than the Warrant Obligations) have been paid in full indefeasibly in cash:

9.01 Indebtedness. Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, whether directly or indirectly, except:

(a) the Obligations and the New Tranche Term Loan Obligations;

(b) Indebtedness existing on the date hereof and set forth on **Schedule 7.13(b)-1** and Permitted Refinancings thereof; *provided that*, in each case, such Indebtedness (other than Permitted Priority Debt) is subordinated to the Obligations on terms satisfactory to the Majority Lenders;

(c) Permitted Priority Debt;

(d) [reserved];

(e) accounts payable to trade creditors for goods and services and current operating liabilities (not the result of the borrowing of money) incurred in the ordinary course of Borrower's or its Subsidiary's business in accordance with customary terms and paid within the specified time, unless contested in good faith by appropriate proceedings and reserved for in accordance with GAAP;

(f) Indebtedness consisting of guarantees resulting from endorsement of negotiable instruments for collection by Borrower or any Subsidiary Guarantor in the ordinary course of business;

(g) Indebtedness (i) of Borrower to any Subsidiary Guarantor and (ii) of any Subsidiary Guarantor to Borrower or any other Subsidiary Guarantor;

(h) Guarantees by Borrower of Indebtedness of any Subsidiary Guarantor and by any Subsidiary Guarantor of Indebtedness of Borrower or any other Subsidiary Guarantor if such guaranteed Indebtedness is Permitted Indebtedness of such Subsidiary Guarantor or Borrower;

(i) normal course of business equipment financing; *provided that* (i) if secured, the collateral therefor consists solely of the assets being financed, the products and proceeds thereof and books and records related thereto, and (ii) the aggregate outstanding principal amount of such Indebtedness, when added to the aggregate outstanding principal amount of the Indebtedness permitted in reliance on **Section 9.01(k)**, does not exceed $500,000 (or the Equivalent Amount in other currencies) at any time;

(j) Permitted Subordinated Debt;

(k) Indebtedness of Borrower or any Subsidiary in respect of Capital Lease Obligations, *provided that* the aggregate outstanding principal amount of such Indebtedness, when added to the aggregate outstanding principal amount of the Indebtedness permitted in reliance on **Section 9.01(i)**, does not exceed $500,000 (or the Equivalent Amount in other currencies) at any time;

(l) Indebtedness of any Person acquired in a Permitted Acquisition (so long as such Indebtedness (A) existed prior to the acquisition of such Person by Borrower or any Subsidiary,

(B) is not created in connection with such acquisition and (C) is solely the obligation of such Person and not of Borrower or any other Subsidiary), *provided that* the aggregate outstanding principal amount of such Indebtedness, when added to the aggregate outstanding principal amount of the Indebtedness permitted in reliance on **Section 9.01(m)**, does not exceed $5,000,000 (or the Equivalent Amount in other currencies) in the aggregate;

(m) Indebtedness consisting of contingent liabilities in respect of indemnification obligations or adjustment of purchase price in connection with the consummation of Permitted Acquisitions, *provided that* the aggregate outstanding principal amount of such Indebtedness, when added to the aggregate outstanding principal amount of the Indebtedness permitted in reliance on **Section 9.01(l)**, does not exceed $5,000,000 (or the Equivalent Amount in other currencies) in the aggregate;

(n) Indebtedness incurred in a transaction specifically permitted under **Section 9.10(d)**;

(o) other Indebtedness not to exceed $250,000 in aggregate at any one time outstanding; and

(p) Indebtedness approved in advance in writing by the Majority Lenders.

9.02 Liens. Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Lien on any property or asset now owned by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except (collectively, "***Permitted Liens***"):

(a) Liens securing the Obligations and the New Tranche Term Loan Obligations;

(b) any Lien on any property or asset of Borrower or any of its Subsidiaries existing on the date hereof and set forth in **Schedule 7.13(b)-2**; *provided that* (i) no such Lien shall extend to any other property or asset of Borrower or any of its Subsidiaries and (ii) any such Lien shall secure only those obligations which it secures on the date hereof and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(c) Liens described in the definition of "Permitted Priority Debt";

(d) Liens securing Indebtedness permitted under **Section 9.01(i)** or **(k)**; *provided that* such Liens are restricted solely to the collateral described in **Section 9.01(i)** or **(k)**;

(e) Liens imposed by law which were incurred in the ordinary course of business, including (but not limited to) carriers', warehousemen's and mechanics' liens and other similar liens arising in the ordinary course of business and which (x) do not in the aggregate materially detract from the value of the Property subject thereto or materially impair the use thereof in the operations of the business of such Person or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the Property subject to such liens and for which adequate reserves have been made if required in accordance with GAAP;

(f) pledges or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance or other similar social security legislation;

(g) Liens securing taxes, assessments and other governmental charges, the payment of which is not yet due or is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserve or other appropriate provisions, if any, as shall be required by GAAP shall have been made;

(h) servitudes, easements, rights of way, restrictions and other similar encumbrances on real Property imposed by applicable Laws and encumbrances consisting of zoning or building restrictions, easements, licenses, restrictions on the use of property or minor imperfections in title thereto which, in the aggregate, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Obligors;

(i) with respect to any real Property, (A) such defects or encroachments as might be revealed by an up-to-date survey of such real Property; (B) the reservations, limitations, provisos and conditions expressed in the original grant, deed or patent of such property by the original owner of such real Property pursuant to applicable Laws; and (C) rights of expropriation, access or user or any similar right conferred or reserved by or in applicable Laws, which, in the aggregate for (A), (B) and (C), are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Obligors;

(j) Liens on Patents, Trademarks, Copyrights or other Intellectual Property rights to the extent (i) such Liens arise from non-exclusive licenses or sublicenses thereof entered into the ordinary course of business of Borrower or any of its Subsidiaries and (ii) such non-exclusive licenses or sublicenses do not, in the aggregate, materially interfere with the ordinary conduct of business of Borrower and its Subsidiaries;

(k) Bankers' liens, rights of setoff and similar Liens incurred on deposits made in the ordinary course of business; and

(l) Liens incurred or deposits made to secure the performance of tenders, bids, leases, statutory or regulatory obligations, surety and appeal bond or government contracts in the ordinary course of business and not for borrowed money;

provided that no Lien otherwise permitted under any of the foregoing **Sections 9.02(b)** (unless such Lien is of the type described under **Section 9.02(j)**), **(c), (d), (e), (f), (h) and (i)** shall apply to any Material Intellectual Property.

9.03 Fundamental Changes and Acquisitions. Borrower will not, and will not permit any of its Subsidiaries to, (i) enter into any transaction of merger, amalgamation or consolidation (ii) liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution) (iii) make any Acquisition or otherwise acquire any business or substantially all the property from, or capital stock of, or be a party to any acquisition of, any Person. Notwithstanding the foregoing provisions of this **Section 9.03**:

(a) Borrower and its Subsidiaries may make Investments permitted under **Section 9.05**;

(b) Borrower may be merged, amalgamated or consolidated with or into another Person provided that Borrower gives the Lenders advance notice prior to entering into any agreement in connection with such transaction of merger, amalgamation or consolidation and otherwise complies with **Section 3.03(b)(ii)**;

(c) any Subsidiary Guarantor may be merged, amalgamated or consolidated with or into Borrower or any other Subsidiary Guarantor;

(d) any Subsidiary Guarantor may sell, lease, transfer or otherwise dispose of any or all of its property (upon voluntary liquidation or otherwise) to Borrower or another Subsidiary Guarantor; and

(e) the capital stock of any Subsidiary Guarantor may be sold, transferred or otherwise disposed of to Borrower or another Subsidiary Guarantor; and

(f) Borrower and its Subsidiaries may make Permitted Acquisitions, not to exceed $10,000,000 in the aggregate.

9.04 Lines of Business. Borrower will not, and will not permit any of its Subsidiaries to, engage to any material extent in any business other than the business engaged in on the date hereof by Borrower or any Subsidiary or a business reasonably related thereto.

9.05 Investments. Borrower will not, and will not permit any of its Subsidiaries to, make, directly or indirectly, or permit to remain outstanding any Investments except:

(a) Investments outstanding on the date hereof and identified in **Schedule 9.05**;

(b) operating deposit accounts with banks;

(c) extensions of credit in the nature of accounts receivable or notes receivable arising from the sales of goods or services in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(d) Permitted Cash Equivalent Investments;

(e) Investments by Borrower and the Subsidiary Guarantors in Borrower's wholly-owned Subsidiary Guarantors (for greater certainty, Borrower shall not be permitted to have any direct or indirect Subsidiaries that are not wholly-owned Subsidiaries);

(f) Hedging Agreements entered into in the ordinary course of Borrower's financial planning solely to hedge currency risks (and not for speculative purposes) and in an aggregate notional amount for all such Hedging Agreements not in excess of $1,500,000 (or the Equivalent Amount in other currencies);

(g) Investments consisting of security deposits with utilities and other like Persons made in the ordinary course of business;

(h) Investments consisting of employee loans, travel advances and guarantees in accordance with Borrower's usual and customary practices with respect thereto (if permitted by applicable law) which in the aggregate shall not exceed $500,000 outstanding at any time (or the Equivalent Amount in other currencies);

(i) Investments received in connection with any Insolvency Proceedings in respect of any customers, suppliers or clients and in settlement of delinquent obligations of, and other disputes with, customers, suppliers or clients;

(j) Permitted Acquisitions;

(k) Investments permitted pursuant to Section 9.03;

(l) Indebtedness permitted by Section 9.01; and

(m) other Investments not exceeding $100,000 individually or $500,000 in the aggregate.

9.06 Restricted Payments. Borrower will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except:

(a) Borrower and each Subsidiary may declare and pay dividends with respect to its capital stock payable solely in additional shares of its common stock;

(b) Borrower and each Subsidiary may purchase, redeem, retire, or otherwise acquire shares of its capital stock or other equity interests with the proceeds received from a substantially concurrent issue of new shares of its capital stock or other equity interests;

(c) for the payment of dividends by any Subsidiary Guarantor to Borrower or to any other Subsidiary Guarantor; and

(d) Borrower may make the following Restricted Payments, not to exceed $500,000 in the aggregate in any fiscal year:

(i) Borrower may purchase, redeem, retire, or otherwise acquire shares of its capital stock or other equity interests from former employees or consultants pursuant to stock repurchase agreements or agreements that have a similar purpose or function so long as an Event of Default does not exist at the time of such repurchase and would not exist after giving effect to such repurchase;

(ii) Borrower may purchase shares of capital stock in connection with the exercise of stock options by way of cashless exercise or in connection with the satisfaction of withholding obligations; and

(iii) Borrower may purchase fractional shares of capital stock arising out of stock dividends, forward or reverse stock splits, combinations or business combinations.

9.07 Payments of Indebtedness. Borrower will not, and will not permit any of its Subsidiaries to, make any payments in respect of any Indebtedness other than (i) the Obligations and (ii) subject to any applicable terms of subordination, other Permitted Indebtedness.

9.08 Change in Fiscal Year. The Borrower will not, and will not permit any of its Subsidiaries to, change the last day of its fiscal year from that in effect on the date hereof, except to change the fiscal year of a Subsidiary acquired in connection with an Acquisition to conform its fiscal year to the Borrower's.

9.09 Sales of Assets, Etc. Unless the Borrower simultaneously makes the prepayment required under **Section 3.03(b)(i)**, the Borrower will not, and will not permit any of its Subsidiaries to, sell, lease, exclusively license (in terms of geography or field of use), transfer, or otherwise dispose of any of its Property (including accounts receivable and capital stock of Subsidiaries) to any Person in one transaction or series of transactions (any thereof, an "***Asset Sale***"), except for any of the following:

(a) transfers of cash in the ordinary course of its business for equivalent value;

(b) dispositions of Permitted Cash Equivalent Investments for equivalent value;

(c) sales of inventory in the ordinary course of its business on ordinary business terms including to distributors;

(d) dispositions of accounts receivable for purposes of collection in the ordinary course of business;

(e) disposition of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such disposition are reasonably promptly applied to the purchase price of such replacement property;

(f) development and other collaborative arrangements where such arrangements provide for the licenses or disclosure of Patents, Trademarks, Copyrights or other Intellectual Property rights in the ordinary course of business and consistent with general market practices where such license requires periodic payments based on per unit sales of a product over a period of time and provided that such licenses must be true licenses as opposed to licenses that are sales transactions in substance;

(g) transfers of Property by any Obligor to any other Obligor;

(h) dispositions of any Property that is obsolete or worn out or no longer used or useful in the Business;

(i) those transactions permitted by **Sections 9.02**, **9.03** or **9.05**; and

(j) so long as no Default or Event of Default has occurred and is continuing, or would result therefrom, dispositions of assets not otherwise permitted in clauses (a) through (i) hereof so long as such dispositions are made at fair market value and the aggregate amount of all such dispositions would not exceed $1,000,000 during any fiscal year, or exceed $2,000,000 in the aggregate during the term of this Agreement.

Lenders acknowledge and agree that clause (e) above includes the right for Borrower to make decisions in the ordinary course of business regarding the registration of any of its Intellectual Property, including without limitation, any decisions regarding application, prosecution, abandonment, or cancellation of any such Intellectual Property, without the consent of any Lender.

9.10 Transactions with Affiliates. Borrower will not, and will not permit any of its Subsidiaries to, sell, lease, license or otherwise transfer any assets to, or purchase, lease, license or otherwise acquire any assets from, or otherwise engage in any other transactions with, any of its Affiliates, except for any of the following:

(a) transactions between or among Obligors;

(b) any Indebtedness permitted by **Section 9.01**;

(c) any Investment permitted by **Section 9.05**;

(d) any Restricted Payment permitted by **Section 9.06**;

(e) any Asset Sale permitted by **Section 9.09**;

(f) customary compensation and indemnification of, and other employment arrangements with, directors, officers and employees of Borrower or any Subsidiary in the ordinary course of business,

(g) Borrower may issue debt or Equity Interests to Affiliates in exchange for cash, *provided that* the terms thereof are no less favorable (including the amount of cash received by Borrower) to Borrower than those that would be obtained in a comparable arm's-length transaction with a Person not an Affiliate of Borrower; and

(h) the transactions set forth on **Schedule 9.10**.

9.11 Restrictive Agreements. Except for Permitted Restrictive Agreements, Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to Borrower or any other Subsidiary or to Guarantee Indebtedness of Borrower or any other Subsidiary; *provided that*:

(i) the foregoing shall not apply to (x) restrictions and conditions imposed by law or by this Agreement and (y) customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder; and

(ii) the foregoing **clause (a)** shall not apply to (x) restrictions or conditions imposed by any agreement relating to secured Permitted Indebtedness if such restrictions or conditions apply only to the property or assets securing such Indebtedness and (y) customary provisions in leases, in-bound licenses of Intellectual Property and other contracts restricting the assignment thereof;

(iii) the foregoing shall not apply to any stockholder agreement, charter, by laws or other organizational documents of Borrower or any Subsidiary as in effect on the date hereof and as amended as permitted hereunder; and

(iv) the foregoing shall not apply to Permitted Liens.

9.12 Amendments to Material Agreements. Borrower will not, and will not permit any of its Subsidiaries to, enter into any material amendment to or material modification of any Material Agreement or terminate any Material Agreement (unless replaced with another agreement that, viewed as a whole, is on better terms for Borrower or such Subsidiary) without in each case the prior written consent of the Lender (which consent shall not be unreasonably withheld or delayed).

9.13 Preservation of Borrower Lease; Operating Leases.

(a) Notwithstanding any provision of this Agreement to the contrary, Borrower shall not:

(i) Surrender, terminate, forfeit, or suffer or permit the surrender, termination or forfeiture of, or agree to a material change, modification, or amendment to, any Borrower Lease that is materially adverse to the Lenders, nor transfer, sell, assign, convey, dispose of, mortgage, pledge, hypothecate, assign or encumber any of its interest in, any Borrower Lease;

(ii) Waive, excuse, condone or in any way release or discharge Borrower Landlord of or from its material obligations, covenants and/or conditions under any Borrower Lease to the extent such waiver, excuse, condonement, release or discharge is materially adverse to the Lenders; or

(iii) Elect to treat any Borrower Lease as terminated or rejected under subsection 365 of the Bankruptcy Code or other applicable Law. Any such election made without Majority Lenders' prior written consent shall be void. If, pursuant to subsection 365 of the Bankruptcy Code or other applicable law, Borrower seeks to offset, against the rent reserved in any Borrower Lease, the amount of any damages caused by the nonperformance by Borrower Landlord of any of its obligations thereunder after the rejection by Borrower Landlord of such Borrower Lease under the Bankruptcy Code or other applicable Law, then Borrower shall not effect any offset of any amounts objected to by Lenders.

(b) Borrower will not, and will not permit any of its Subsidiaries to, make any expenditures in respect of operating leases, except for:

(i) real estate operating leases;

(ii) operating leases between Borrower and any of its wholly-owned Subsidiaries or between any of Borrower's wholly-owned Subsidiaries; and

(c) operating leases that would not cause Borrower and its Subsidiaries, on a consolidated basis, to make payments exceeding $1,000,000 (or the Equivalent Amount in other currencies) in any fiscal year.

9.14 Sales and Leasebacks. Except as disclosed on **Schedule 9.14**, Borrower will not, and will not permit any of its Subsidiaries to, become liable, directly or indirectly, with respect to any lease, whether an operating lease or a Capital Lease Obligation, of any property (whether real, personal, or mixed), whether now owned or hereafter acquired, (i) which Borrower or such Subsidiary has sold or transferred or is to sell or transfer to any other Person and (ii) which Borrower or such Subsidiary intends to use for substantially the same purposes as property which has been or is to be sold or transferred.

9.15 Hazardous Material. Borrower will not, and will not permit any of its Subsidiaries to, use, generate, manufacture, install, treat, release, store or dispose of any Hazardous Material, except in compliance with all applicable Environmental Laws or where the failure to comply could not reasonably be expected to result in a Material Adverse Change.

9.16 Accounting Changes. Borrower will not, and will not permit any of its Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required or permitted by GAAP.

9.17 Compliance with ERISA. No ERISA Affiliate shall cause or suffer to exist (a) any event that could result in the imposition of a Lien with respect to any Title IV Plan or Multiemployer Plan or (b) any other ERISA Event that would, in the aggregate, have a Material Adverse Effect. No Obligor or Subsidiary thereof shall cause or suffer to exist any event that could result in the imposition of a Lien with respect to any Benefit Plan.

SECTION 10
FINANCIAL COVENANTS

10.01 Minimum Revenue.

(a) Borrower and its Subsidiaries shall have Revenue:

(i) during the twelve month period beginning on January 1, 2014, of at least $30,000,000;

(ii) during the twelve month period beginning on January 1, 2015, of at least $50,000,000;

(iii) during the twelve month period beginning on January 1, 2016, of at least $65,000,000;

(iv) during the twelve month period beginning on January 1, 2017, of at least $80,000,000;

(v) during the twelve month period beginning on January 1, 2018, of at least $95,000,000; and

(vi) during each twelve month period following thereafter, of at least $95,000,000.

10.02 Cure Right.

(a) Notwithstanding anything to the contrary contained in **Section 11**, in the event that the Borrower fails to comply with the covenants contained in **Section 10.01(a)(i)-(v) or Section 10.03** (such covenants for such applicable periods being the "***Specified Financial Covenants***"), Borrower shall have the right at any time in the twelve (12) months prior to, or within 90 (ninety) days of, the end of the respective calendar year:

(i) to issue additional shares of Equity Interests in exchange for cash (the ***"Equity Cure Right"***), or

(ii) to borrow Permitted Subordinated Debt (the "***Subordinated Debt Cure Right***" and, collectively with the Equity Cure Right, the "***Cure Right***"),

and upon the receipt by Borrower of the Cure Amount pursuant to the exercise of such Cure Right, such Cure Amount shall be deemed to constitute Revenue or cash, as applicable, of Borrower for purposes of the Specified Financial Covenants and the Specified Financial Covenants shall be recalculated. If, after giving effect to the foregoing recalculation, Borrower shall then be in compliance with the requirements of the Specified Financial Covenants, Borrower shall be deemed to have satisfied the requirements of the Specified Financial Covenants as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach of the Specified Financial Covenants that had occurred shall be deemed cured without any further action of Borrower or Lenders for all purposes under the Loan Documents.

(b) Notwithstanding anything herein to the contrary, (i) the Cure Right may be exercised no more than twice, (ii) the amount of the payment received by Borrower from investors investing in Borrower pursuant to **Section 10.02(a)** (the "***Cure Amount***") shall be equal to twice the shortfall amount required to cause the Borrower to be in compliance with the Specified Financial Covenants, (iii) Borrower shall deliver a compliance certificate, evidencing compliance with the Specified Financial Covenants after giving effect to receipt of the Cure Amount, and (iv) upon receipt by Borrower of the Cure Amount, Borrower shall immediately prepay the Loans, without any Prepayment Premium, in an amount equal to the Cure Amount, credited in the order set forth on **Section 3.03(b)(i)(A)-(E)**.

10.03 Minimum Cash

Borrower and Subsidiaries shall maintain at all times Liquidity in an amount which shall exceed the greater of (i) $2,000,000 and (ii) to the extent Borrower has incurred Permitted Priority Debt, the minimum cash balance, if any, required of Borrower by Borrower's Permitted Priority Debt creditors.

SECTION 11
EVENTS OF DEFAULT

11.01 Events of Default. Each of the following events shall constitute an ***"Event of Default":***

(a) Borrower shall fail to pay any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) any Obligor shall fail to pay any Obligation (other than an amount referred to in **Section 11.01(a)**) when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days;

(c) any representation or warranty made or deemed made by or on behalf of Borrower or any of its Subsidiaries in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, shall: (i) prove to have been incorrect when made or deemed made to the extent that such representation or warranty contains any materiality or Material Adverse Effect qualifier; or (ii) prove to have been incorrect in any material respect when made or deemed made to the extent that such representation or warranty does not otherwise contain any materiality or Material Adverse Effect qualifier;

(d) any Obligor shall fail to observe or perform any covenant, condition or agreement contained in **Section 8.02**, **8.03** (with respect to the Borrower's existence), **8.11**, **8.12**, **8.14**, **9** or **10**;

(e) except as otherwise set forth in **Section 10.02**, any Obligor shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in **Section 11.01(a)**, **(b)** or **(d)**) or any other Loan Document and such failure shall continue unremedied for a period of 20 or more days after written notice thereof from the Lenders is received by a Responsible Officer of Borrower;

(f) Borrower or any of its Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable after giving effect to any applicable grace or cure period as originally provided by the terms of such Indebtedness;

(g) (i) any material breach of, or "event of default" or similar event by any Obligor under, any Material Agreement, (ii) any material breach of, or "event of default" or similar event under, the documentation governing the New Tranche Term Loan Obligations or any other Material Indebtedness shall occur, or (iii) any event or condition occurs (A) that results in the New Tranche Term Loan Obligations or any other Material Indebtedness becoming due prior to its scheduled maturity or (B) that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of the New Tranche Term Loan Obligations or any other such Material Indebtedness or any trustee or agent on its or their behalf to cause the New Tranche Term Loan Obligations or any other such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; *provided that* this **Section 11.01(g)** shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing the New Tranche Term Loan Obligations or any other such Material Indebtedness.

(h) any Obligor:

(i) becomes insolvent, or generally does not or becomes unable to pay its debts or meet its liabilities as the same become due, or admits in writing its inability to pay its debts generally, or declares any general moratorium on its indebtedness, or proposes a compromise or arrangement or deed of company arrangement between it and any class of its creditors;

(ii) commits an act of bankruptcy or makes an assignment of its property for the general benefit of its creditors or makes a proposal (or files a notice of its intention to do so);

(iii) institutes any proceeding seeking to adjudicate it an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief, under any federal, provincial or foreign Law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity, or files an answer admitting the material allegations of a petition filed against it in any such proceeding;

(iv) applies for the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property; or

(v) takes any action, corporate or otherwise, to approve, effect, consent to or authorize any of the actions described in this **Section 11.01(h)** or in **Section 11.01(i)**, or otherwise acts in furtherance thereof or fails to act in a timely and appropriate manner in defense thereof;

(i) any petition is filed, application made or other proceeding instituted against or in respect of Borrower or any Subsidiary:

(i) seeking to adjudicate it an insolvent;

(ii) seeking a receiving order against it;

(iii) seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), deed of company arrangement or composition of it or its debts or any other relief under any federal, provincial or foreign law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity; or

(iv) seeking the entry of an order for relief or the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property, and such petition, application or proceeding continues undismissed, or unstayed and in effect, for a period of thirty (30) days after the institution thereof; *provided that* if an order, decree or judgment is granted or entered (whether or not entered or subject to appeal) against Borrower or such Subsidiary thereunder in the interim, such grace period will cease to apply; *provided further that* if Borrower or such Subsidiary files an answer admitting the material allegations of a petition filed against it in any such proceeding, such grace period will cease to apply;

(j) any other event occurs which, under the laws of any applicable jurisdiction, has an effect equivalent to any of the events referred to in either of **Section 11.01(h)** or **(i)**;

(k) one or more judgments for the payment of money shall be rendered against any Obligor or any combination thereof in an aggregate amount in excess of (i) $500,000 (or the Equivalent Amount in other currencies) and the same shall remain undischarged for a period of 45 consecutive days, or (ii) $5,000,000 (or the Equivalent Amount in other currencies) and the same shall remain undischarged for a period of 60 consecutive days, in either case, during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Obligor to enforce any such judgment;

(l) a Material Adverse Change shall have occurred;

(m) (i) the Liens created by the Security Documents shall at any time not constitute a valid and perfected Lien on the collateral intended to be covered thereby (to the extent perfection by filing, registration, recordation or possession is required herein or therein) in favor of the Lenders, free and clear of all other Liens (other than Permitted Liens), (ii) except for expiration in accordance with its terms, any of the Security Documents or any Guarantee of any of the Obligations (including that contained in **Section 13**) shall for whatever reason be terminated or cease to be in full force and effect, (ii) the enforceability of any of the Security Documents or any Guarantee of any of the Obligations (including that contained in **Section 13**) shall be contested by any Obligor;

(n) any injunction, whether temporary or permanent, shall be rendered against any Obligor that prevents the Obligors from selling or manufacturing the Product or its commercially

available successors, or any of their other material and commercially available products in the United States or Europe for more than 45 consecutive calendar days.

11.02 Remedies. Upon the occurrence of any Event of Default, then, and in every such event (other than an Event of Default described in **Section 11.01(h)**, **(i)** or **(j)**), and at any time thereafter during the continuance of such event, Majority Lenders may, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations, shall become due and payable immediately (in the case of the Loans, at the Redemption Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor; and in case of any an Event of Default described in **Section 11.01(h)**, **(i)** or **(j)**, the Commitment shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other Obligations, shall automatically become due and payable immediately (in the case of the Loans, at the Redemption Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor.

SECTION 12
MISCELLANEOUS

12.01 No Waiver. No failure on the part of the Lenders to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any Loan Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

12.02 Notices. All notices, requests, instructions, directions and other communications provided for herein (including any modifications of, or waivers, requests or consents under, this Agreement) shall be given or made in writing (including by telecopy) delivered, if to Borrower, another Obligor or the Lenders, to its address specified on the signature pages hereto or its Guarantee Assumption Agreement, as the case may be, or at such other address as shall be designated by such party in a notice to the other parties. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given upon receipt of a legible copy thereof, in each case given or addressed as aforesaid. All such communications provided for herein by telecopy shall be confirmed in writing promptly after the delivery of such communication (it being understood that non-receipt of written confirmation of such communication shall not invalidate such communication). Notices, documents, certificates and other deliverables to the Lenders by any Obligor may be made solely to the Control Agent and the Control Agent shall promptly deliver such notices, documents, certificates and other deliverables to the other Lenders hereunder.

12.03 Expenses, Indemnification, Etc.

(a) **Expenses**. Borrower agrees to pay or reimburse (i) the Lenders for all of their reasonable out of pocket costs and expenses (including the reasonable out-of-pocket fees and expenses of Morrison & Foerster LLP, special counsel to the Lenders, and any sales, goods and services or other similar taxes applicable thereto, and printing, reproduction, document delivery, communication and travel costs) in connection with (x) the negotiation, preparation, execution and delivery of this Agreement, the New Tranche Term Loan Agreement, and the other Loan Documents and the making of the Loans (exclusive of post-closing costs), (y) post-closing costs and (z) the negotiation or preparation of any modification, supplement or waiver of any of the terms of this Agreement or any of the other Loan Documents (whether or not consummated) and (ii) the Lenders for all of their out of pocket costs and expenses (including the fees and expenses of legal counsel) in connection with any enforcement or collection proceedings resulting from the occurrence of an Event of Default; *provided, however, that* the Borrower shall not be required to pay or reimburse any amounts pursuant to **Section 12.03(a)(i)(x)** in excess of the Expense Cap (inclusive of all out of pocket costs and expenses in connection with the negotiation, preparation, execution and delivery of the New Tranche Term Loan Agreement and the making of the loans thereunder); *provided further that*, so long as the Loans are consummated on the Closing Date, then such fees shall be credited from the fees paid by the Borrower pursuant to **Section 2.03**.

(b) **Indemnification**. Borrower hereby indemnifies the Lenders, their Affiliates, and their respective directors, officers, employees, attorneys, agents, advisors and controlling parties (each, an "***Indemnified Party***") from and against, and agrees to hold them harmless against, any and all Claims or Losses of any kind (including reasonable fees and disbursements of counsel), joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to any investigation, litigation or proceeding or the preparation of any defense with respect thereto arising out of or in connection with or relating to this Agreement or any of the other Loan Documents or the transactions contemplated hereby or thereby or any use made or proposed to be made with the proceeds of the Loans, whether or not such investigation, litigation or proceeding is brought by Borrower, any of its shareholders or creditors, an Indemnified Party or any other Person, or an Indemnified Party is otherwise a party thereto, and whether or not any of the conditions precedent set forth in **Section 6** are satisfied or the other transactions contemplated by this Agreement are consummated, except to the extent such Claim or Loss is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct. No Obligor shall assert any claim against any Indemnified Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the transactions contemplated hereby or thereby or the actual or proposed use of the proceeds of the Loans. Borrower, its Subsidiaries and Affiliates and their respective directors, officers, employees, attorneys, agents, advisors and controlling parties are each sometimes referred to in this Agreement as a "***Borrower Party***." No Lender shall assert any claim against any Borrower Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the transactions contemplated hereby or thereby or the actual or proposed use of the proceeds of the Loans.

12.04 Amendments, Etc. Except as otherwise expressly provided in this Agreement, any provision of this Agreement may be modified or supplemented only by an instrument in writing signed by the Borrower and the Lenders. Any consent, approval, (including without limitation any approval of or authorization for any amendment to any of the Loan Documents), instruction or other expression of the Lenders under any of the Loan Documents may be obtained by an instrument in writing signed in one or more counterparts by Majority Lenders; provided however, that the consent of all of the Lenders shall be required to:

(i) amend, modify, discharge, terminate or waive any of the terms of this Agreement if such amendment, modification, discharge, termination or waiver would increase the amount of the Loans, reduce the fees payable hereunder, reduce interest rates or other amounts payable with respect to the Loans, extend any date fixed for payment of principal, interest or other amounts payable relating to the Loans or extend the repayment dates of the Loans;

(ii) amend the provisions of **Section 6**;

(iii) amend, modify, discharge, terminate or waive any Security Document if the effect is to release a material part of the Collateral subject thereto otherwise than pursuant to the terms hereof or thereof; or

(iv) amend this **Section 12.04**.

Notwithstanding anything to the contrary herein, a Defaulting Lender shall not have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

12.05 Successors and Assigns.

(a) **General**. 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 Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lenders. Any of the Lenders may assign or otherwise transfer any of their rights or obligations hereunder to an assignee in accordance with the provisions of **Section 12.05(b)**, (ii) by way of participation in accordance with the provisions of **Section 12.05(e)** subject to the limitations of **Section 12.05(f)** or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 12.05(g)**. 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 **Section 12.05(e)** and, to the extent expressly contemplated hereby, the Indemnified Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lenders**. Any of the Lenders may at any time assign to one or more Eligible Transferees all or a portion of their rights and obligations under this Agreement (including all or a portion of the Commitment and the Loans at the time owing to it); *provided, however, that* no such assignment shall be made to Borrower, an Affiliate of Borrower, or any employees or directors of Borrower at any time. Subject to the recording thereof by the Lenders pursuant to **Sections 12.05(c)** and **12.05(d)**, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of the Lenders under this Agreement, and correspondingly the assigning Lender shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of a 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 **Section 5** and **Section 12.03**. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this **Section 12.05(b)** 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 **Section 12.05(e)**.

(c) **Amendments to Loan Documents**. Each of the Lenders and the Obligors agrees to enter into such amendments to the Loan Documents, and such additional Security Documents and other instruments and agreements, in each case in form and substance reasonably acceptable to the Lenders and the Obligors, as shall reasonably be necessary to implement and give effect to any assignment made under this **Section 12.05**.

(d) **Register**. The Lenders, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices, which shall be the office of the Control Agent, a register for the recordation of the name and address of any assignee of the Lenders and the Commitment and outstanding principal amount of the Loans owing thereto (the "***Register***"). The entries in the Register shall be conclusive, absent manifest error, and Borrower may treat each Person whose name is recorded in the Register pursuant to the terms hereof as the "Lender" hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrower, at any reasonable time and from time to time upon reasonable prior notice.

(e) **Participations**. Any of the Lenders may at any time, without the consent of, or notice to, Borrower, sell participations to any Person (other than a natural person or Borrower or any of the Borrower's Affiliates or Subsidiaries) (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 the 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 shall continue to deal solely and directly with the Lenders in connection therewith.

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 that would (i) increase or extend the term of such Lender's Commitment, (ii) extend the date fixed for the payment of principal of or interest on the Loans or any portion of any fee hereunder payable to the Participant, (iii) reduce the amount of any such payment of principal, or (iv) reduce the rate at which interest is payable thereon to a level below the rate at which the Participant is entitled to receive such interest. Subject to **Section 12.05(f)**, Borrower agrees that each Participant shall be entitled to the benefits of **Section 5** to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 12.05(b)**. To the extent permitted by law, each Participant also shall be entitled to the benefits of **Section 4.04(a)** as though it were the Lender.

(f) **Limitations on Rights of Participants**. A Participant shall not be entitled to receive any greater payment under **Section 5.01** or **5.05** than a Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent.

(g) **Certain Pledges**. The Lenders may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement and any other Loan Document to secure obligations of the Lenders, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided that* no such pledge or assignment shall release the Lenders from any of their obligations hereunder or substitute any such pledgee or assignee for the Lenders as a party hereto.

12.06 Survival. The obligations of Borrower under **Sections 5.01**, **5.03**, **5.05**, **12.03**, **12.05**, **12.09**, **12.10**, **12.11**, **12.12**, **12.13**, **12.14** and **Section 13** (solely to the extent guaranteeing any of the obligations under the foregoing Sections) shall survive the repayment of the Loans and the termination of the Commitment and, in the case of the Lenders' assignment of any interest in the Commitment or the Loans hereunder, shall survive, in the case of any event or circumstance that occurred prior to the effective date of such assignment, the making of such assignment, notwithstanding that the Lenders may cease to be "Lenders" hereunder. In addition, each representation and warranty made, or deemed to be made by a notice of the Loans, herein or pursuant hereto shall survive the making of such representation and warranty.

12.07 Captions. The table of contents and captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

12.08 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

12.09 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws that would result in the application of the laws of any other jurisdiction; provided that Section 5-1401 of the New York General Obligations Law shall apply.

12.10 Jurisdiction, Service of Process and Venue.

(a) **Submission to Jurisdiction**. Each Obligor agrees that any suit, action or proceeding with respect to this Agreement or any other Loan Document to which it is a party or any judgment entered by any court in respect thereof may be brought initially in the federal or state courts in Houston, Texas or in the courts of its own corporate domicile and irrevocably submits to the non-exclusive jurisdiction of each such court for the purpose of any such suit, action, proceeding or judgment. This **Section 12.10(a)** is for the benefit of the Lenders only and, as a result, no Lender shall be prevented from taking proceedings in any other courts with jurisdiction. To the extent allowed by applicable Laws, the Lenders may take concurrent proceedings in any number of jurisdictions.

(b) **Alternative Process**. Nothing herein shall in any way be deemed to limit the ability of the Lenders to serve any such process or summonses in any other manner permitted by applicable law.

(c) **Waiver of Venue, Etc**. Each Obligor irrevocably waives to the fullest extent permitted by law any objection that it may now or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document and hereby further irrevocably waives to the fullest extent permitted by law any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. A final judgment (in respect of which time for all appeals has elapsed) in any such suit, action or proceeding shall be conclusive and may be enforced in any court to the jurisdiction of which such Obligor is or may be subject, by suit upon judgment.

12.11 Waiver of Jury Trial. EACH OBLIGOR AND EACH LENDER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

12.12 Waiver of Immunity. To the extent that any Obligor may be or become entitled to claim for itself or its Property or revenues any immunity on the ground of sovereignty or the like from suit, court jurisdiction, attachment prior to judgment, attachment in aid of execution of a judgment or execution of a judgment, and to the extent that in any such jurisdiction there may be attributed such an immunity (whether or not claimed), such Obligor hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity with respect to its obligations under this Agreement and the other Loan Documents.

12.13 Entire Agreement. Subject to **Section 1.05**, this Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. EACH OBLIGOR ACKNOWLEDGES, REPRESENTS AND WARRANTS THAT IN DECIDING TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS OR IN TAKING OR NOT TAKING ANY ACTION HEREUNDER OR THEREUNDER, IT HAS NOT RELIED, AND WILL NOT RELY, ON ANY STATEMENT, REPRESENTATION, WARRANTY, COVENANT, AGREEMENT OR UNDERSTANDING, WHETHER WRITTEN OR ORAL, OF OR WITH

THE LENDERS OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

12.14 Severability. If any provision hereof is found by a court to be invalid or unenforceable, to the fullest extent permitted by applicable law the parties agree that such invalidity or unenforceability shall not impair the validity or enforceability of any other provision hereof.

12.15 No Fiduciary Relationship. Borrower acknowledges that the Lenders have no fiduciary relationship with, or fiduciary duty to, Borrower arising out of or in connection with this Agreement or the other Loan Documents, and the relationship between the Lenders and the Borrower are solely that of creditor and debtor. This Agreement and the other Loan Documents do not create a joint venture among the parties.

12.16 Confidentiality. The Lenders agree to maintain the confidentiality of the Confidential Information (as defined in the Non-Disclosure Agreement (defined below)) in accordance with the terms of that certain non-disclosure agreement dated October 31, 2012 among Borrower and Capital Royalty, L.P (the "***Non-Disclosure Agreement***").

Any new Lender that becomes party to this Agreement hereby agrees to be bound by the terms of the Non-Disclosure Agreement. The parties to this Agreement shall prepare a mutually agreeable press release announcing the completion of this transaction on the Closing Date.

12.17 USA PATRIOT Act. The Lenders hereby notify the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "***Act***"), they are required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender to identify Borrower in accordance with the Act.

12.18 Maximum Rate of Interest. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (in each case, the "***Maximum Rate***"). If the Lenders shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans, and not to the payment of interest, or, if the excessive interest exceeds such unpaid principal, the amount exceeding the unpaid balance shall be refunded to the applicable Obligor. In determining whether the interest contracted for, charged, or received by the Lenders exceeds the Maximum Rate, the Lenders may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Indebtedness and other obligations of any Obligor hereunder, or (d) allocate interest between portions of such Indebtedness and other obligations under the Loan Documents to the end that no such portion shall bear interest at a rate greater than that permitted by applicable Law.

12.19 Real Property Security Waivers.

(A) Borrower acknowledges that all or any portion of the Obligations may now or hereafter be secured by a Lien or Liens upon real property evidenced by certain documents including, without limitation, deeds of trust and assignments of rents. Lenders may, pursuant to the terms of said real property security documents and applicable law, foreclose under all or any portion of one or more of said Liens by means of judicial or nonjudicial sale or sales. Borrower agrees that Lenders may exercise whatever rights and remedies they may have with respect to said real property security, all without affecting the liability of Borrower hereunder, except to the extent Lenders realize payment by such action or proceeding. Except as provided under applicable law, no election to proceed in one form of action or against any party, or on any obligation shall constitute a waiver of Lenders' rights to proceed in any other form of action or against Borrower or any other Person, or diminish the liability of Borrower, or affect the right of Lenders to proceed against Borrower for any deficiency, except to the extent Lenders realize payment by such action, notwithstanding the effect of such action upon Borrower's rights of subrogation, reimbursement or indemnity, if any, against Borrower or any other Person.

(B) To the extent permitted under applicable law, Borrower hereby waives any rights and defenses that are or may become available to Borrower by reason of Sections 2787 to 2855, inclusive, of the California Civil Code.

(C) To the extent permitted under applicable law, Borrower hereby waives all rights and defenses that Borrower may have because the Obligations are or may be secured by real property. This means, among other things:

(1) Lenders may collect from Borrower without first foreclosing on any real or personal property collateral pledged by any other Obligor;

(2) If Lenders foreclose on any real property collateral pledged by Borrower:

i. The amount of the Loan may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and

ii. Lenders may collect from Borrower even if Lender, by foreclosing on the real property collateral, has destroyed any right Borrower may have to collect from any other Obligor.

To the extent permitted under applicable law, this is an unconditional and irrevocable waiver of any rights and defenses Borrower may have because the Obligations hereunder are or may be secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure.

(D) To the extent permitted under applicable law, Borrower waives all rights and defenses arising out of an election of remedies by Lenders, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Borrower's rights of subrogation and reimbursement against the

principal by the operation of Section 580d of the California Code of Civil Procedure or otherwise.

(E) **Waiver of Marshaling**. Without limiting the foregoing in any way, each Obligor hereby irrevocably waives and releases, to the extent permitted by Law, any and all rights it may have at any time (whether arising directly or indirectly, by operation of law, contract or otherwise) to require the marshaling of any assets of any Obligor, which right of marshaling might otherwise arise from any payments made or obligations performed.

SECTION 13
GUARANTEE

13.01 The Guarantee. The Subsidiary Guarantors hereby jointly and severally guarantee to the Lenders and their successors and assigns the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of the principal of and interest on the Loans and all fees and other amounts from time to time owing to the Lenders by Borrower under this Agreement or under any other Loan Document and by any other Obligor under any of the Loan Documents, in each case strictly in accordance with the terms thereof (such obligations being herein collectively called the "***Guaranteed Obligations***"). The Subsidiary Guarantors hereby further jointly and severally agree that if Borrower shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Subsidiary Guarantors will promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

13.02 Obligations Unconditional. The obligations of the Subsidiary Guarantors under **Section 13.01** are absolute and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the obligations of Borrower under this Agreement or any other agreement or instrument referred to herein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this **Section 13.02** that the obligations of the Subsidiary Guarantors hereunder shall be absolute and unconditional, joint and several, under any and all circumstances. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Subsidiary Guarantors hereunder, which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to the Subsidiary Guarantors, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(b) any of the acts mentioned in any of the provisions of this Agreement or any other agreement or instrument referred to herein shall be done or omitted;

(c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be modified, supplemented or amended in any respect, or any right under this Agreement or any other agreement or instrument referred to herein shall be waived or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with; or

(d) any lien or security interest granted to, or in favor of, the Lenders as security for any of the Guaranteed Obligations shall fail to be perfected.

The Subsidiary Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Lenders exhaust any right, power or remedy or proceed against Borrower under this Agreement or any other agreement or instrument referred to herein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations.

13.03 Reinstatement. The obligations of the Subsidiary Guarantors under this **Section 13** shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of Borrower in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Subsidiary Guarantors jointly and severally agree that they will indemnify the Lenders on demand for all reasonable costs and expenses (including fees of counsel) incurred by the Lenders in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

13.04 Subrogation. The Subsidiary Guarantors hereby jointly and severally agree that until the payment and satisfaction in full of all Guaranteed Obligations (other than the Warrant Obligations) and the expiration and termination of the Commitment of the Lenders under this Agreement they shall not exercise any right or remedy arising by reason of any performance by them of their guarantee in **Section 13.01**, whether by subrogation or otherwise, against Borrower or any other guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations.

13.05 Remedies. The Subsidiary Guarantors jointly and severally agree that, as between the Subsidiary Guarantors and the Lenders, the obligations of Borrower under this Agreement and under the other Loan Documents may be declared to be forthwith due and payable as provided in **Section 11** (and shall be deemed to have become automatically due and payable in the circumstances provided in **Section 11**) for purposes of **Section 13.01** notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by Borrower) shall forthwith become due and payable by the Subsidiary Guarantors for purposes of **Section 13.01**.

13.06 Instrument for the Payment of Money. Each Subsidiary Guarantor hereby acknowledges that the guarantee in this **Section 13** constitutes an instrument for the payment of

money, and consents and agrees that the Lender, at its sole option, in the event of a dispute by such Subsidiary Guarantor in the payment of any moneys due hereunder, shall have the right to proceed by motion for summary judgment in lieu of complaint pursuant to N.Y. Civ. Prac. L&R § 3213.

13.07 Continuing Guarantee. The guarantee in this **Section 13** is a continuing guarantee, and shall apply to all Guaranteed Obligations whenever arising.

13.08 Rights of Contribution. The Subsidiary Guarantors hereby agree, as between themselves, that if any Subsidiary Guarantor shall become an Excess Funding Guarantor (as defined below) by reason of the payment by such Subsidiary Guarantor of any Guaranteed Obligations, each other Subsidiary Guarantor shall, on demand of such Excess Funding Guarantor (but subject to the next sentence), pay to such Excess Funding Guarantor an amount equal to such Subsidiary Guarantor's Pro Rata Share (as defined below and determined, for this purpose, without reference to the properties, debts and liabilities of such Excess Funding Guarantor) of the Excess Payment (as defined below) in respect of such Guaranteed Obligations. The payment obligation of a Subsidiary Guarantor to any Excess Funding Guarantor under this **Section 13.08** shall be subordinate and subject in right of payment to the prior payment in full of the obligations of such Subsidiary Guarantor under the other provisions of this **Section 13** and such Excess Funding Guarantor shall not exercise any right or remedy with respect to such excess until payment and satisfaction in full of all of such obligations.

For purposes of this **Section 13.08**, (i) "***Excess Funding Guarantor***" means, in respect of any Guaranteed Obligations, a Subsidiary Guarantor that has paid an amount in excess of its Pro Rata Share of such Guaranteed Obligations, (ii) "***Excess Payment***" means, in respect of any Guaranteed Obligations, the amount paid by an Excess Funding Guarantor in excess of its Pro Rata Share of such Guaranteed Obligations and (iii) "***Pro Rata Share***" means, for any Subsidiary Guarantor, the ratio (expressed as a percentage) of (x) the amount by which the aggregate present fair saleable value of all properties of such Subsidiary Guarantor (excluding any shares of stock of any other Subsidiary Guarantor) exceeds the amount of all the debts and liabilities of such Subsidiary Guarantor (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of such Subsidiary Guarantor hereunder and any obligations of any other Subsidiary Guarantor that have been Guaranteed by such Subsidiary Guarantor) to (y) the amount by which the aggregate fair saleable value of all properties of all of the Subsidiary Guarantors exceeds the amount of all the debts and liabilities (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of the Borrower and the Subsidiary Guarantors hereunder and under the other Loan Documents) of all of the Subsidiary Guarantors, determined (A) with respect to any Subsidiary Guarantor that is a party hereto on the Closing Date, as of the Closing Date, and (B) with respect to any other Subsidiary Guarantor, as of the date such Subsidiary Guarantor becomes a Subsidiary Guarantor hereunder.

13.09 General Limitation on Guarantee Obligations. In any action or proceeding involving any provincial, territorial or state corporate law, or any state or federal bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Subsidiary Guarantor under **Section 13.01** would otherwise, taking into account the provisions of **Section 13.08**, be held or determined to be void, invalid or unenforceable, or subordinated to the

claims of any other creditors, on account of the amount of its liability under **Section 13.01**, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Subsidiary Guarantor, the Lenders or any other Person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

13.10 Additional Waivers.

(a) To the extent permitted under applicable law, each Subsidiary Guarantor hereby waives any rights and defenses that are or may become available to Subsidiary Guarantor by reason of Sections 2787 to 2855, inclusive, of the California Civil Code.

(b) To the extent permitted under applicable law, each Subsidiary Guarantor hereby waives all rights and defenses that Subsidiary Guarantor may have because the Obligations are or may be secured by real property. This means, among other things:

(i) Lenders may collect from any Subsidiary Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower;

(ii) If Lenders foreclose on any real property collateral pledged by Borrower:

(A) The amount of the Loan may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and

(B) Lenders may collect from each Subsidiary Guarantor even if Lenders, by foreclosing on the real property collateral, has destroyed any right such Subsidiary Guarantor may have to collect from Borrower.

To the extent permitted under applicable law, this is an unconditional and irrevocable waiver of any rights and defenses each Subsidiary Guarantor may have because the Obligations are or may be secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure.

(c) To the extent permitted under applicable law, each Subsidiary Guarantor waives all rights and defenses arising out of an election of remedies by Lenders, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed such Subsidiary Guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the California Code of Civil Procedure or otherwise.

(d) To the extent permitted under applicable law, each Subsidiary Guarantor hereby waives any right or defense it may have at law or equity, including California Code of Civil Procedure Section 580a, to a fair market value hearing or action to determine a deficiency judgment after a foreclosure.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

BORROWER:

TANDEM DIABETES CARE, INC.

By */S/ Kim Blickenstaff*
Name: Kim Blickenstaff
Title: President and Chief Executive Officer

Address for Notices:

11045 Roselle Street
San Diego, CA 92121

Attn: Chief Executive Officer
Tel.: 858-366-6876
Fax: 858-202-6707
Email: kblickenstaff@tandemdiabetes.com

LENDERS:

CAPITAL ROYALTY PARTNERS II L.P.
By CAPITAL ROYALTY PARTNERS II GP L.P., its General Partner
By CAPITAL ROYALTY PARTNERS II GP LLC, its General Partner

By */S/ Charles Tate*
Name: Charles Tate
Title: Sole Member

Address for Notices:
1000 Main Street, Suite 2500
Houston, TX 77002
Attn: General Counsel
Tel.: 713.209.7350
Fax: 713.209.7351
Email: adorenbaum@capitalroyalty.com

CAPITAL ROYALTY PARTNERS II – PARALLEL FUND "A" L.P.
By CAPITAL ROYALTY PARTNERS II— PARALLEL FUND "A" GP L.P., its General Partner
By CAPITAL ROYALTY PARTNERS II — PARALLEL FUND "A" GP LLC, its General Partner

By */S/ Charles Tate*
Name: Charles Tate
Title: Sole Member

Address for Notices:
1000 Main Street, Suite 2500
Houston, TX 77002
Attn: General Counsel
Tel.: 713.209.7350
Fax: 713.209.7351
Email: adorenbaum@capitalroyalty.com

CAPITAL ROYALTY PARTNERS II
(CAYMAN) L.P.
By CAPITAL ROYALTY PARTNERS II
(CAYMAN) GP L.P., its General Partner
By CAPITAL ROYALTY PARTNERS II
(CAYMAN) GP LLC, its General Partner

By */S/ Charles Tate*
Name: Charles Tate
Title: Sole Member

WITNESS:
Name:

Address for Notices:
1000 Main Street, Suite 2500
Houston, TX 77002
Attn: General Counsel
Tel.: 713.209.7350
Fax: 713.209.7351
Email: adorenbaum@capitalroyalty.com

As a Lender under the Existing Term Loan Agreement, and for the purpose of consenting to the amendment and restatement of the Existing Term Loan Agreement only:

CAPITAL ROYALTY PARTNERS II –
PARALLEL FUND "B" (CAYMAN) L.P.
By CAPITAL ROYALTY PARTNERS II
(CAYMAN) GP L.P., its General Partner
By CAPITAL ROYALTY PARTNERS II
(CAYMAN) GP LLC, its General Partner

By */S/ Charles Tate*
Name: Charles Tate
Title: Sole Member

WITNESS:
Name:

Address for Notices:
1000 Main Street, Suite 2500
Houston, TX 77002
Attn: General Counsel
Tel.: 713.209.7350
Fax: 713.209.7351
Email: adorenbaum@capitalroyalty.com

Schedule 1
to Amended and Restated Term Loan Agreement

COMMITMENTS AND WARRANTS

Lender	Commitment	Proportionate Share
Capital Royalty Partners II L.P.	$ 8,071,395.34	26.90%
Capital Royalty Partners II – Parallel Fund "A" L.P.	$19,076,243.00	63.59%
Capital Royalty Partners II (Cayman) L.P.	$ 2,852,361.66	9.51%
TOTAL	**$ 30,000,000**	**100%**

Schedule 7.03
to Amended and Restated Term Loan Agreement

GOVERNMENTAL AND OTHER APPROVALS; NO CONFLICTS

1. Amended and Restated Loan and Security Agreement, dated January 14, 2013, by and between Borrower and Silicon Valley Bank, as may be amended from time to time.

Schedule 7.05(b)
to Amended and Restated Term Loan Agreement

CERTAIN INTELLECTUAL PROPERTY

Schedule 7.05(b)(i)(A)

See attached docket reports

Schedule 7.05(b)(i)(B)

See attached docket reports

Schedule 7.05(b)(i)(C)

See attached docket reports

Schedule 7.05(b)(ii)(E)

Borrower believes that certain of the Obligor Intellectual Property to which Borrower obtained title pursuant to the "Confidential Intellectual Property Agreement" by and between Borrower and Smiths Medical ASD, Inc. dated July 10, 2012 may be infringed, violated, misappropriated or otherwise used by one or more Persons that compete with Borrower. Borrower is analyzing such Obligor Intellectual Property.

Schedule 7.05(b)(iii)(A)

Borrower believes that all or most of the Patents to which Borrower obtained title pursuant to the "Confidential Intellectual Property Agreement" by and between Borrower and Smiths Medical ASD, Inc. dated July 10, 2012 are valid and enforceable; however, Borrower is analyzing certain of these Patents.

Schedule 7.05(c)
to Amended and Restated Term Loan Agreement

MATERIAL INTELLECTUAL PROPERTY

Docket Number	Title	Series No. / Filing Date Patent No. / Issue Date
4574.03US01 United States of America	Infusion System with Disposable Cartridge Having Pressure Venting and Pressure Feedback	10/086,641 02/28/2002 **US 6,852,104** 02/8/2005
[***]	[***]	[***]
4574.16US02 United States of America	Methods and Devices for Determination of Flow Reservoir Volume	12/714,299 02/26/2010 **US 8,573,027** 11/05/2013
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
4574.25US05 United States of America	Infusion Pump System With Disposable Cartridge Having Pressure Venting and Pressure Feedback	12/846,733 07/29/2010 **US 8,641,671** 02/04/2014
[***]	[***]	[***]
4574.25US07 United States of America	Infusion Pump System With Disposable Cartridge Having Pressure Venting and Pressure Feedback	13/270,160 10/10/2011 **US 8,287,495** 10/16/2012

[***]: CONFIDENTIAL PORTIONS OMITTED AND FILED SEPARATELY WITH THE COMMISSION.

4574.25US08 United States of America	Infusion Pump System With Disposable Cartridge Having Pressure Venting and Pressure Feedback	13/271,156 10/11/2011 **US 8,298,184** 10/30/2012
4574.25EP Europe	Infusion Pump System With Disposable Cartridge Having Pressure Venting and Pressure Feedback	10805076.6 07/29/2010 **EP 2459251** 03/12/2014 (DE, FR, GB)
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
4576.23US01 United States of America (in-licensed)	Insulin Pump Having Missed Meal Bolus Alarm	10/087,460 02/28/2002 **US 6,744,350** 06/01/2004

[***]: CONFIDENTIAL PORTIONS OMITTED AND FILED SEPARATELY WITH THE COMMISSION.

4576.25US02 United States of America	Insulin Pump Having Missed Meal Bolus Alarm	13/481,050 05/25/2012
(in-licensed)		**US 8,690,856** 04/08/2014
[***]	[***]	[***]
[***]	[***]	[***]

[***]: CONFIDENTIAL PORTIONS OMITTED AND FILED SEPARATELY WITH THE COMMISSION.

Schedule 7.06
to Amended and Restated Term Loan Agreement

CERTAIN LITIGATION

[***]

[***]: CONFIDENTIAL PORTIONS OMITTED AND FILED SEPARATELY WITH THE COMMISSION.

Schedule 7.08
to Amended and Restated Term Loan Agreement

TAXES

None

Schedule 7.12
to Amended and Restated Term Loan Agreement

INFORMATION REGARDING SUBSIDIARIES

None

Schedule 7.13(b)-1
to Amended and Restated Term Loan Agreement

EXISTING INDEBTEDNESS OF BORROWER AND ITS SUBSIDIARIES

1. The Borrower is currently a party to the Amended and Restated Loan and Security Agreement, dated January 14, 2013, by and between Borrower and Silicon Valley Bank, as may be amended from time to time. No amounts are current outstanding under this loan.

Schedule 7.13(b)-2
to Amended and Restated Term Loan Agreement

LIENS GRANTED BY THE OBLIGORS

1. The Borrower has granted certain Liens to Silicon Valley Bank pursuant to the Amended and Restated Loan and Security Agreement, dated January 14, 2013, by and between Borrower and Silicon Valley Bank, as may be amended from time to time.

2. State of Mississippi State Tax Lien – $2,026.

3. State of South Carolina State Tax Lien – $1,225.

Schedule 7.14
to Amended and Restated Term Loan Agreement

MATERIAL AGREEMENTS OF EACH OBLIGOR

1. Lease Agreement, dated March 7, 2012, as amended through November 7, 2013, by and between Borrower and ARE-11025/11075 Roselle Street, LLC.

2. Lease Agreement, dated November 5, 2013, by and between Borrower and ARE-11025/11075 Roselle Street, LLC.

3. Confidential Intellectual Property Agreement, dated July 10, 2012, by and between Borrower and Smiths Medical ASD, Inc.

4. Amended and Restated Development and Commercialization Agreement, dated January 4, 2013, by and between Borrower and DexCom, Inc.

5. Research, Development and Commercialization Agreement, dated January 2, 2013, by and between Borrower and JDRF.

Schedule 7.15
to Amended and Restated Term Loan Agreement

PERMITTED RESTRICTIVE AGREEMENTS

1. Amended and Restated Loan and Security Agreement, dated January 14, 2013, by and between Borrower and Silicon Valley Bank, as may be amended from time to time.

Schedule 7.16
to Amended and Restated Term Loan Agreement

REAL PROPERTY OWNED OR LEASED BY BORROWER AND SUBSIDIARIES

1. Lease Agreement, dated March 7, 2012, as amended through November 7, 2013, by and between Borrower and ARE-11025/11075 Roselle Street, LLC.

2. Lease Agreement, dated November 5, 2013, by and between Borrower and ARE-11025/11075 Roselle Street, LLC.

Schedule 7.17
to Amended and Restated Term Loan Agreement

PENSION MATTERS

1. Tandem Diabetes Care, Inc. 401(k) Plan

2. Tandem Diabetes Care, Inc. Employee Handbook

3. Tandem Diabetes Care, Inc. Travel and Expense Policies

4. Tandem Diabetes Care, Inc. 2014 Cash Bonus Plan

Schedule 8.15(a)
to Amended and Restated Term Loan Agreement

JURISDICTIONS FOR FOREIGN INTELLECTUAL PROPERTY FILINGS

1. Australia

2. Canada

3. China

4. Europe: rights in various European countries through the European Patent Organisation (for Patents) and the European Union (via the Community Trade Mark system for Trademarks).

5. India

6. Japan

7. Korea

8. Member states of the World Intellectual Property Organisation per international applications for Patents filed via the Patent Cooperation treaty (PCT).

Schedule 9.05
to Amended and Restated Term Loan Agreement

EXISTING INVESTMENTS

1. Silicon Valley Bank Asset Management Account, where current total investment as of March 21, 2014 is $46,040,312.95. Funds are currently invested in Permitted Cash Equivalent Investments.

2. Capital Advisors Group Asset Management Account, where current total investment as of March 21, 2014 is $48,012,133.10. Funds are currently invested in Permitted Cash Equivalent Investments.

Schedule 9.10
to Amended and Restated Term Loan Agreement

TRANSACTIONS WITH AFFILIATES

1. Third Amended and Restated Investors' Rights Agreement dated August 30, 2012, by and among the Borrower and certain stockholders of Borrower named there.

Schedule 9.14
to Amended and Restated Term Loan Agreement

PERMITTED SALES AND LEASEBACKS

None

Exhibit A
to Amended and Restated Term Loan Agreement

FORM OF GUARANTEE ASSUMPTION AGREEMENT

GUARANTEE ASSUMPTION AGREEMENT dated as of [DATE] by [NAME OF ADDITIONAL SUBSIDIARY GUARANTOR], a [corporation][limited liability company] (the "***Additional Subsidiary Guarantor***"), in favor of the lenders from time to time party thereto (the "***Lenders***") under that certain Amended and Restated Term Loan Agreement, dated as of April 4, 2014 (as amended, restated, supplemented or otherwise modified, renewed, refinanced or replaced, the "***Loan Agreement***"), among Tandem Diabetes Care, Inc., a Delaware corporation ("***Borrower***"), Capital Royalty Partners II L.P. and the other lenders party thereto and the Subsidiary Guarantors party thereto.

Pursuant to **Section 8.12(a)** of the Loan Agreement, the Additional Subsidiary Guarantor hereby agrees to become a "Subsidiary Guarantor" for all purposes of the Loan Agreement, and a "Grantor" for all purposes of the Security Agreement. Without limiting the foregoing, the Additional Subsidiary Guarantor hereby, jointly and severally with the other Subsidiary Guarantors, guarantees to the Lenders and their successors and assigns the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of all Guaranteed Obligations (as defined in **Section 13.01** of the Loan Agreement) in the same manner and to the same extent as is provided in **Section 13** of the Loan Agreement. In addition, as of the date hereof, the Additional Subsidiary Guarantor hereby makes the representations and warranties set forth in **Sections 7.01**, **7.02**, **7.03**, **7.05(a)**, **7.06(a)**, **7.06(b)**, **7.07**, **7.08** and **7.18** of the Loan Agreement, and in **Section 2** of the Security Agreement, with respect to itself and its obligations under this Agreement and the other Loan Documents, as if each reference in such Sections to the Loan Documents included reference to this Agreement, such representations and warranties to be made as of the date hereof.

The Additional Subsidiary Guarantor hereby instructs its counsel to deliver the opinions referred to in **Section 8.12(a)** of the Loan Agreement to the Lenders.

IN WITNESS WHEREOF, the Additional Subsidiary Guarantor has caused this Guarantee Assumption Agreement to be duly executed and delivered as of the day and year first above written.

[ADDITIONAL SUBSIDIARY GUARANTOR]

By _____
Name:
Title:

[Reserved]

Exhibit C-1
to Amended and Restated Term Loan Agreement

FORM OF TERM LOAN NOTE

U.S. $[ ] [DATE]

FOR VALUE RECEIVED, the undersigned, Tandem Diabetes Care, Inc., a Delaware corporation ("***Borrower***"), hereby promises to pay to [Capital Royalty Partners II L.P./Capital Royalty Partners II – Parallel Fund "A" L.P./Capital Royalty Partners II (Cayman) L.P.] or its assigns (the "***Lender***") at the Lender's principal office in 1000 Main Street Suite 2500, Houston, TX 77002, in immediately available funds, the aggregate principal sum set forth above, or, if less, the aggregate unpaid principal amount of all Loans made by the Lender pursuant to **Section 2.01** of the Amended and Restated Term Loan Agreement, dated as of April 4, 2014 (as amended, restated, supplemented or otherwise modified, renewed, refinanced or replaced, the "***Loan Agreement***"), among the Borrower, the Lender, the other lenders party thereto and the Subsidiary Guarantors party thereto, on the date or dates specified in the Loan Agreement, together with interest on the principal amount of such Loans from time to time outstanding thereunder at the rates, and payable in the manner and on the dates, specified in the Loan Agreement.

This Note is a Note issued pursuant to the terms of **Section 2.04** of the Loan Agreement, and this Note and the holder hereof are entitled to all the benefits and security provided for thereby or referred to therein, to which Loan Agreement reference is hereby made for a statement thereof. All defined terms used in this Note, except terms otherwise defined herein, shall have the same meaning as in the Loan Agreement.

THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION; *PROVIDED THAT* SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW SHALL APPLY.

THIS NOTE IS SUBJECT TO THE TERMS OF THE INTERCREDITOR AGREEMENT, DATED AS OF JANUARY 14, 2013, AMONG CAPITAL ROYALTY PARTNERS II L.P., CAPITAL ROYALTY PARTNERS II – PARALLEL FUND "A" L.P., AND SILICON VALLEY BANK, AS AMENDED, RESTATED OR MODIFIED FROM TIME TO TIME.

The Borrower hereby waives demand, presentment, protest or notice of any kind hereunder, other than notices provided for in the Loan Documents. The non-exercise by the holder hereof of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in such particular or any subsequent instance.

THIS NOTE MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS OF THE LOAN AGREEMENT.

TANDEM DIABETES CARE, INC.

By _____
Name:
Title:

Exhibit C-1

FORM OF PIK LOAN NOTE

U.S. $[ ] [DATE]

FOR VALUE RECEIVED, the undersigned, Tandem Diabetes Care, Inc. ("***Borrower***"), hereby promises to pay to [Capital Royalty Partners II L.P./Capital Royalty Partners II – Parallel Fund "A" L.P./Capital Royalty Partners II (Cayman) L.P.] or its assigns (the "***Lender***") at the Lender's principal office in 1000 Main Street Suite 2500, Houston, TX 77002, in immediately available funds, the aggregate principal sum set forth above, or, if less, the aggregate unpaid principal amount of all PIK Loans made by the Lender pursuant to **Section 3.02(d)** of the Amended and Restated Term Loan Agreement, dated as of April 4, 2014 (as amended, restated, supplemented or otherwise modified, renewed, refinanced or replaced, the "***Loan Agreement***"), among the Borrower, the Lender, the other lenders party thereto and the Subsidiary Guarantors party thereto, on the date or dates specified in the Loan Agreement, together with interest on the principal amount of such PIK Loans from time to time outstanding thereunder at the rates, and payable in the manner and on the dates, specified in the Loan Agreement.

This Note is a Note issued pursuant to the terms of **Section 3.02(d)** of the Loan Agreement, and this Note and the holder hereof are entitled to all the benefits and security provided for thereby or referred to therein, to which Loan Agreement reference is hereby made for a statement thereof. All defined terms used in this Note, except terms otherwise defined herein, shall have the same meaning as in the Loan Agreement.

The Lender may supplement this Note by attaching to this Note a schedule (the "***Note Schedule***") to evidence additional PIK Loans made by the Lender to Borrower following the date first above written. The Lender may endorse thereon the date such additional PIK Loan is made and the principal amount of such additional PIK Loan when made. Such Note Schedule shall form part of this Note and all references to this Note shall mean this Note, as supplemented by such Note Schedule.

THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION; *PROVIDED THAT* SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW SHALL APPLY.

THIS NOTE IS SUBJECT TO THE TERMS OF THE INTERCREDITOR AGREEMENT, DATED AS OF JANUARY 14, 2013, AMONG CAPITAL ROYALTY PARTNERS II L.P., CAPITAL ROYALTY PARTNERS II – PARALLEL FUND "A" L.P., AND SILICON VALLEY BANK, AS AMENDED, RESTATED OR MODIFIED FROM TIME TO TIME.

FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL

REVENUE CODE OF 1986, AS AMENDED, AND THE RULES AND REGULATIONS THEREUNDER, THIS NOTE IS BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT; PLEASE CONTACT [NAME OF CFO OR TAX DIRECTOR OF ISSUER], [TITLE], [ADDRESS], TELEPHONE: [TEL #] TO OBTAIN INFORMATION REGARDING THE ISSUE PRICE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT AND THE YIELD TO MATURITY.

The Borrower hereby waives demand, presentment, protest or notice of any kind hereunder, other than notices provided for in the Loan Documents. The non-exercise by the holder hereof of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in such particular or any subsequent instance.

THIS NOTE MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS OF THE LOAN AGREEMENT.

TANDEM DIABETES CARE, INC.

By _____
Name:
Title:

PIK NOTE SCHEDULE

This Note Schedule supplements that certain Note issued by Borrower to [Capital Royalty Partners II L.P./Capital Royalty Partners II – Parallel Fund "A" L.P./Capital Royalty Partners II (Cayman) L.P.][1] or its assigns on [*DATE*].

Date of additional PIK Loan	**Amount of additional PIK Loan made**	**Notation made by[2]**

1 Delete as appropriate for each Note.
2 Insert name of party making notation (e.g. Borrower or Lender).

Exhibit D
to Amended and Restated Term Loan Agreement

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

Reference is made to the Amended and Restated Term Loan Agreement, dated as of April 4, 2014 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "***Loan Agreement***"), among Tandem Diabetes Care, Inc., a Delaware corporation ("***Borrower***"), Capital Royalty Partners II L.P. and the parties from time to time party thereto as lenders ("***Lenders***"), and the subsidiary guarantors from time to time party thereto. [ ] (the "***Foreign Lender***") is providing this certificate pursuant to **Section 5.05(e)(ii)(B)** of the Loan Agreement. The Foreign Lender hereby represents and warrants that:

1. The Foreign Lender is the sole record owner of the Loans as well as any obligations evidenced by any Note(s) in respect of which it is providing this certificate;

2. The Foreign Lender's direct or indirect partners/members are the sole beneficial owners of the Loans as well as any obligations evidenced by any Note(s) in respect of which it is providing this certificate;

3. Neither the Foreign Lender nor its direct or indirect partners/members is a "bank" for purposes of Section 881(c)(3)(A) of the Internal Revenue Code of 1986, as amended (the "***Code***"). In this regard, the Foreign Lender further represents and warrants that:

(a) neither the Foreign Lender nor its direct or indirect partners/members is subject to regulatory or other legal requirements as a bank in any jurisdiction; and

(b) neither the Foreign Lender nor its direct or indirect partners/members has been treated as a bank for purposes of any tax, securities law or other filing or submission made to any Governmental Authority, any application made to a rating agency or qualification for any exemption from tax, securities law or other legal requirements;

3. Neither the Foreign Lender nor its direct or indirect partners/members is a 10-percent shareholder of Borrower within the meaning of Section 881(c)(3)(B) of the Code; and

4. Neither the Foreign Lender nor its direct or indirect partners/members is a controlled foreign corporation receiving interest from a related person within the meaning of Section 881(c)(3)(C) of the Code.

[Signature follows]

IN WITNESS WHEREOF, the undersigned has caused this certificate to be duly executed and delivered as of the date indicated below.

[NAME OF NON-U.S. LENDER]

By _____
Name:
Title:

Date: _____

Exhibit E
to Amended and Restated Term Loan Agreement

FORM OF COMPLIANCE CERTIFICATE

[DATE]

This certificate is delivered pursuant to **Section 8.01(c)** of, and in connection with the consummation of the transactions contemplated in, the Amended and Restated Term Loan Agreement, dated as of April 4, 2014 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "***Loan Agreement***"), among Tandem Diabetes Care, Inc., a Delaware corporation ("***Borrower***"), Capital Royalty Partners II L.P. and the parties from time to time party thereto as lenders ("***Lenders***"), and the subsidiary guarantors from time to time party thereto. Capitalized terms used herein and not otherwise defined herein are used herein as defined in the Loan Agreement.

The undersigned, a duly authorized Responsible Officer of Borrower having the name and title set forth below under his signature, hereby certifies, on behalf of the Borrower for the benefit of the Lenders and pursuant to **Section 8.01(c)** of the Loan Agreement that such Responsible Officer of the Borrower is familiar with the Loan Agreement and that, in accordance with each of the following sections of the Loan Agreement, each of the following is true on the date hereof, both before and after giving effect to any Loan to be made on or before the date hereof:

In accordance with Section **8.01**[**(a)/(b)**] of the Loan Agreement, attached hereto as **Annex A** are the financial statements for the [fiscal quarter/fiscal year] ended [ ] required to be delivered pursuant to **Section 8.01**[**(a)/(b)**] of the Loan Agreement. Such financial statements fairly present in all material respects the consolidated financial position, results of operations and cash flow of the Borrower and its Subsidiaries as at the dates indicated therein and for the periods indicated therein in accordance with GAAP [(subject to the absence of footnote disclosure and normal year-end audit adjustments)][3] [without qualification as to the scope of the audit.][4]

Attached hereto as **Annex B** are the calculations used to determine compliance with each financial covenant contained in **Section 10** of the Loan Agreement.

No Default is continuing as of the date hereof[, except as provided for on **Annex C** attached hereto, with respect to each of which Borrower proposes to take the actions set forth on **Annex C**].

IN WITNESS WHEREOF, the undersigned has executed this certificate on the date first written above.

TANDEM DIABETES CARE, INC.

---

3 Insert language in brackets only for quarterly certifications.
4 Insert language in brackets only for annual certifications.

By _____
Name:
Title:

Exhibit E-2

FINANCIAL STATEMENTS

[see attached]

Exhibit E-3

CALCULATIONS OF FINANCIAL COVENANT COMPLIANCE

I. Section 10.01(a)(i)-(vi): Minimum Revenue

A. Revenue received during the twelve month period beginning on January 1, 2014: $_____
Test Period: January 1, 2014 to December 31, 2014
Is line I.A equal to or greater than $30,000,000? *Yes: In compliance; No: Not in compliance*

B. Revenue received during the twelve month period beginning on January 1, 2015: $_____
Test Period: January 1, 2015 to December 31, 2015
Is line I.B equal to or greater than $50,000,000? *Yes: In compliance; No: Not in compliance*

C. Revenue received during the twelve month period beginning on January 1, 2016: $_____
Test Period: January 1, 2016 to December 31, 2016
Is line I.C equal to or greater than $65,000,000? *Yes: In compliance; No: Not in compliance*

D. Revenue received during the twelve month period beginning on January 1, 2017: $_____
Test Period: January 1, 2017 to December 31, 2017
Is line I.D equal to or greater than $80,000,000? *Yes: In compliance; No: Not in compliance*

E. Revenue received during the twelve month period beginning on January 1, 2018: $_____
Test Period: January 1, 2018 to December 31, 2018
Is line I.D equal to or greater than $95,000,000? *Yes: In compliance; No: Not in compliance*

F. Revenue received during the twelve month period beginning on January 1, 201__ $_____
Test Period: January 1, 201__ to December 31, 201__
Is line I.E equal to or greater than $95,000,000? *Yes: In compliance; No: Not in compliance*

II Section 10.03: Minimum Cash

A. Amount of unencumbered cash and Permitted Cash Equivalent Investments (which for greater certainty shall not include any undrawn credit lines), in each case, to the extent held in an account over which the Lenders have a first priority perfected security interest: $_____

B. The greater of: $_____

(1) $2,000,000 and

(2) to the extent Borrower has incurred Permitted Priority

Debt, the minimum cash balance required of Borrower by Borrower's Permitted Priority Debt creditors	
Is Line IIA equal to or greater than Line IIB?:	*Yes: In compliance; No: Not in compliance*

TERM LOAN AGREEMENT

dated as of

April 4, 2014

between

TANDEM DIABETES CARE, INC.
as Borrower,

The SUBSIDIARY GUARANTORS from Time to Time Party Hereto,

and

The LENDERS from Time to Time Party Hereto,

U.S. $30,000,000

[***]: CONFIDENTIAL PORTIONS OMITTED AND FILED SEPARATELY WITH THE COMMISSION.

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SCHEDULES AND EXHIBITS

TERM LOAN AGREEMENT, dated as of April 4, 2014 (this "***Agreement***"), among TANDEM DIABETES CARE, INC., a Delaware corporation ("***Borrower***"), the SUBSIDIARY GUARANTORS from time to time party hereto and the Lenders from time to time party hereto.

RECITALS

The Borrower and certain of the Lenders have entered into that certain Term Loan Agreement, dated as of December 24, 2012 (the "***Existing Term Loan Agreement***"), pursuant to which such Lenders have extended certain term loans in the principal amount of $30,000,000 to the Borrower on January 14, 2013.

At the request of the Borrower, on the date hereof, the Borrower and the lenders under the Existing Term Loan Agreement shall amend and restate the Existing Term Loan Agreement. All references in this Agreement to the "Existing Term Loan Agreement" hereafter shall mean the Existing Term Loan Agreement, as amended and restated on the date hereof (except where the context otherwise requires).

The Borrower has also requested that the Lenders hereto extend credit in the form of a new tranche of term loans to the Borrower in an aggregate principal amount of up to $30,000,000, and such Lenders are prepared to make such loans on and subject to the terms and conditions hereof.

Accordingly, the parties agree as follows:

SECTION 1
DEFINITIONS

1.01 Certain Defined Terms. As used herein, the following terms have the following respective meanings:

"***Accounting Change Notice***" has the meaning set forth in **Section 1.04(a)**.

"***Act***" has the meaning set forth in Section 12.17.

"***Acquisition***" means any transaction, or any series of related transactions, by which any Person directly or indirectly, by means of a take-over bid, tender offer, amalgamation, merger, purchase of assets, or similar transaction having the same effect as any of the foregoing, (a) acquires any business or all or substantially all of the assets of any Person engaged in any business, (b) acquires control of securities of a Person engaged in a business representing more than 50% of the ordinary voting power for the election of directors or other governing body if the business affairs of such Person are managed by a board of directors or other governing body, or (c) acquires control of more than 50% of the ownership interest in any Person engaged in any business that is not managed by a board of directors or other governing body.

"***Affected Lende***r" has the meaning set forth in **Section 2.07(a)**.

"***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.

"***Agreement***" has the meaning set forth in the introduction hereto.

"***Asset Sale***" is defined in Section 9.09.

"***Asset Sale Net Proceeds***" means the aggregate amount of the cash proceeds received from any Asset Sale, net of any bona fide costs incurred in connection with such Asset Sale, plus, with respect to any non-cash proceeds of an Asset Sale, the fair market value of such non cash proceeds as determined by the Majority Lenders, acting reasonably.

"***Assignment and Acceptance***" means an assignment and acceptance entered into by a Lender and an assignee of such Lender.

"***Bankruptcy Code***" means Title II of the United States Code entitled "Bankruptcy."

"***Benefit Plan***" means any employee benefit plan as defined in Section 3(3) of ERISA (whether governed by the laws of the United States or otherwise) to which any Obligor or Subsidiary thereof incurs or otherwise has any obligation or liability, contingent or otherwise.

"***Borrower***" has the meaning set forth in the introduction hereto.

"***Borrower Facility***" means the premises located at 11025, 11035, 11045, 11065 and 11075 Roselle Street, San Diego, CA 92121, which are leased by Borrower pursuant to the Borrower Leases.

"***Borrower Landlord***" means ARE-11025/11075 Roselle Street, LLC.

"***Borrower Lease***" means (a) the Lease Agreement dated March 7, 2012, by and between Borrower and ARE-11025/11075 Roselle Street, LLC, as amended by (i) the First Amendment to the Lease Agreement dated April 24, 2012, by and between Borrower and ARE-11025/11075 Roselle Street, LLC, (ii) the Second Amendment to the Lease Agreement dated July 31, 2012, by and between Borrower and ARE-11025/11075 Roselle Street, LLC, and (iii) the Third Amendment to the Lease Agreement dated November 5, 2013, by and between Borrower and ARE-11025/11075 Roselle Street, LLC; and (b) the Lease Agreement dated November 5, 2013, by and between Borrower and ARE-11025/11075 Roselle Street, LLC.

"***Borrower Party***" has the meaning set forth in **Section 12.03(b)**.

"***Borrowin***g" means a borrowing consisting of Loans made on the same day by the Lenders according to their respective Commitments (including without limitation a borrowing of a PIK Loan).

"***Borrowing Date***" means the date of each Borrowing.

"***Borrowing Notice Date***" means, a date that is at least twenty (20) Business Days prior to the Borrowing Date of such Borrowing.

"***Business Day***" means a day (other than a Saturday or Sunday) on which commercial banks are not authorized or required to close in New York City.

"***Capital Lease Obligations***" means, as to any Person, the obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) real and/or personal Property which obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

"***Capital Royalty Intercreditor Agreement***" means that certain intercreditor agreement, dated as of the date hereof, between the lenders under the Existing Term Loan Agreement and the Lenders hereto.

"***Change of Control***" means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group of Persons acting jointly or otherwise in concert, of capital stock representing more than 30% of the aggregate ordinary voting power represented by the issued and outstanding capital stock of the Borrower, (b) during any period of twelve (12) consecutive calendar months, the occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were neither (i) nominated by the board of directors of the Borrower, nor (ii) appointed by directors so nominated, or (c) the acquisition of direct or indirect Control of the Borrower by any Person or group of Persons acting jointly or otherwise in concert; in each case whether as a result of a tender or exchange offer, open market purchases, privately negotiated purchases or otherwise; provided, however, that no Change of Control shall be deemed to occur as the result of any of the foregoing occurrences if after such occurrence, the Existing Shareholder Group collectively owns, directly or indirectly, beneficially or of record, capital stock representing more than 30% of the aggregate ordinary voting power represented by the issued and outstanding capital stock of Borrower.

"***Claims***" includes claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions, informations (brought by a public prosecutor without grand jury indictment) or other similar processes, assessments or reassessments.

"***Closing Date***" means the date as of which the Lenders notify the Borrower that the conditions precedent set forth in **Section 6.01** have been satisfied or waived, and the first Borrowing under this Agreement occurs.

"***Code***" means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

"***Collateral***" means the collateral provided for in the Security Documents.

"***Collateral Access Agreement***" means a collateral access agreement with respect to Borrower Facility executed by Borrower Landlord in form and substance satisfactory to Majority Lenders.

"***Commitment***" means, with respect to each Lender, the obligation of such Lender to make Loans to the Borrower in accordance with the terms and conditions of this Agreement, which commitment is in the amount set forth opposite such Lender's name on **Schedule 1** under the caption "Commitment", as such Schedule may be amended from time to time (subject to any transfer of Commitments from PIOP to another Lender in accordance with **Section 8.16** if Borrower is not a "Small Business" within the meaning of the SBIC Act, and the regulations promulgated thereunder on the Closing Date). The aggregate Commitments on the date hereof equal $30,000,000. For purposes of clarification, the amount of any PIK Loans shall not reduce the amount of the available Commitment.

"***Commitment Period***" means the period from and including the Closing Date and through and including March 31, 2015.

"***Commodity Account***" is defined in the Security Agreement.

"***Compliance Certificate***" has the meaning given to such term in **Section 8.01(d)**.

"***Contracts***" means contracts, licenses, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements under which a Person has, or will have, any liability or contingent liability (in each case, whether written or oral, express or implied).

"***Control***" means, in respect of a particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"***Control Agent***" is defined in the Security Agreement.

"***Copyright***" is defined in the Security Agreement.

"***CRPC***" means Capital Royalty Partners II (Cayman) L.P.

"CRPPF" means Capital Royalty Partners II – Parallel Fund "A" L.P., a Delaware limited partnership.

"***Cure Amount***" has the meaning set forth in **Section 10.02(b)**.

"***Cure Right***" has the meaning set forth in **Section 10.02(a)**.

"***Default***" means any Event of Default and any event that, upon the giving of notice, the lapse of time or both, would constitute an Event of Default.

"***Defaulting Lender***" means, subject to **Section 2.06**, any Lender that (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans, within three (3) Business Days of the date required to be funded by it hereunder, (b) has notified the Borrower or any Lender that it does not intend to comply with its funding obligations or has

made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, or (c) has, or has a direct or indirect parent company that has, (i) become the subject of an Insolvency Proceeding, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; 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.

"***Deposit Account***" is defined in the Security Agreement.

"***Dollars***" and "***$***" means lawful money of the United States of America.

"***Domestic Subsidiary***" means any Subsidiary that is a corporation, limited liability company, partnership or similar business entity incorporated, formed or organized under the laws of the United States, any State of the United States or the District of Columbia.

"***Eligible Transferee***" means and includes a commercial bank, an insurance company, a finance company, a financial institution, any investment fund that invests in loans or any other "accredited investor" (as defined in Regulation D of the Securities Act) that is principally in the business of managing investments or holding assets for investment purposes; provided that "Eligible Transferee" shall not include any Person that is principally in the business of managing investments or holding assets for investment purposes that has a board participation right in a company that produces, markets or sells, or develops a program to market or sell, a marketed or Phase III product in competition with the Borrower.

"***Environmental Law***" means any federal, state, provincial or local governmental law, rule, regulation, order, writ, judgment, injunction or decree relating to pollution or protection of the environment or the treatment, storage, disposal, release, threatened release or handling of hazardous materials, and all local laws and regulations related to environmental matters and any specific agreements entered into with any competent authorities which include commitments related to environmental matters.

"***Equity Cure Right***" has the meaning set forth in **Section 10.02(a)(i)**.

"***Equity Interest***" shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or nonvoting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and 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 property of, such partnership, but excluding debt securities convertible or exchangeable into such equity.

"***Equivalent Amount***" means, with respect to an amount denominated in one currency, the amount in another currency that could be purchased by the amount in the first currency determined by reference to the Exchange Rate at the time of determination.

"***ERISA***" means the United States Employee Retirement Income Security Act of 1974, as amended.

"***ERISA Affiliate***" means, collectively, any Obligor, Subsidiary thereof, and any Person under common control, or treated as a single employer, with any Obligor or Subsidiary thereof, within the meaning of Section 414(b), (c), (m) or (o) of the Code.

"***ERISA Event***" means (i) a reportable event as defined in Section 4043 of ERISA with respect to a Title IV Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event; (ii) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Title IV Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following 30 days; (iii) a withdrawal by any Obligor or any ERISA Affiliate thereof from a Title IV Plan or the termination of any Title IV Plan resulting in liability under Sections 4063 or 4064 of ERISA; (iv) the withdrawal of any Obligor or any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by any Obligor or any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA; (v) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Title IV Plan or Multiemployer Plan; (vi) the imposition of liability on any Obligor or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the failure by any Obligor or any ERISA Affiliate thereof to make any required contribution to a Plan, or the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Title IV Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430 of the Code with respect to any Title IV Plan or the failure to make any required contribution to a Multiemployer Plan; (viii) the determination that any Title IV Plan is considered an at-risk plan or a plan in endangered to critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (ix) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan; (x) the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Obligor or any ERISA Affiliate thereof; (xi) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Title IV Plan; (xii) the occurrence of a non-exempt prohibited transaction under Sections 406 or 407 of ERISA for which any Obligor or any Subsidiary thereof may be directly or indirectly liable; (xiii) a violation of the applicable requirements of Section 404 or 405 of ERISA or the exclusive benefit rule under Section 401(a) of the Code by any fiduciary or disqualified person for which any Obligor or any ERISA Affiliate thereof may be directly or indirectly liable; (xiv) the occurrence of an act or omission which could give rise to the imposition on any Obligor or any ERISA Affiliate thereof of fines, penalties, taxes or related charges under Chapter 43 of the Code or

under Sections 409, 502(c), (i) or (1) or 4071 of ERISA; (xv) the assertion of a material claim (other than routine claims for benefits) against any Plan or the assets thereof, or against any Obligor or any Subsidiary thereof in connection with any such plan; (xvi) receipt from the IRS of notice of the failure of any Qualified Plan to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Qualified Plan to fail to qualify for exemption from taxation under Section 501(a) of the Code; (xvii) the imposition of any lien (or the fulfillment of the conditions for the imposition of any lien) on any of the rights, properties or assets of any Obligor or any ERISA Affiliate thereof, in either case pursuant to Title I or IV, including Section 302(f) or 303(k) of ERISA or to Section 401(a)(29) or 430(k) of the Code; or (xviii) the establishment or amendment by any Obligor or any Subsidiary thereof of any "welfare plan", as such term is defined in Section 3(1) of ERISA, that provides post-employment welfare benefits in a manner that would increase the liability of any Obligor.

"***Event of Default***" has the meaning set forth in **Section 11.01**.

"***Exchange Rate***" means the rate at which any currency (the "***Pre-Exchange Currency***") may be exchanged into another currency (the "***Post-Exchange Currency***"), as set forth on such date on the relevant Reuters screen at or about 11:00 a.m. (Central time) on such date. In the event that such rate does not appear on the Reuters screen, the "Exchange Rate" with respect to exchanging such Pre-Exchange Currency into such Post-Exchange Currency shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Borrower and the Majority Lenders or, in the absence of such agreement, such Exchange Rate shall instead be determined by the Majority Lenders by any reasonable method as they deem applicable to determine such rate, and such determination shall be conclusive absent manifest error.

"***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 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, (b) Other Connection Taxes, (c) U.S. federal withholding Taxes that are imposed on amounts payable to a Lender to the extent that the obligation to withhold amounts existed on the date that such Lender became a "Lender" under this Agreement, except in each case to the extent such Lender is a direct or indirect assignee of any other Lender that was entitled, at the time the assignment of such other Lender became effective, to receive additional amounts under **Section 5.05**, (d) any Taxes imposed in connection with FATCA, (e) any Medicare Taxes, and (f) Taxes attributable to such Recipient's failure to comply with **Section 5.05(e)**.

"***Existing Shareholder Group***" means the group of investors who, on the date hereof, collectively own, directly or indirectly, beneficially or of record, capital stock representing more than 30% of the aggregate ordinary voting power represented by the issued and outstanding capital stock of Borrower, consisting of Domain Ventures, Texas Pacific Group, Delphi Ventures, HLM Venture Partners, and Kearny Venture Partners.

"***Existing Term Loan Agreement***" has the meaning set forth in the recitals hereto.

"***Existing Term Loan Lenders***" means the "Lenders" as defined in the Existing Term Loan Agreement.

"***Existing Term Loan Obligations***" means the "Obligations" as defined in the Existing Term Loan Agreement.

"***Expense Cap***" has the meaning set forth in the Fee Letter.

"***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 more onerous to comply with), any regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code.

"***Fee Letter***" means that fee letter agreement dated as of the date hereof between Borrower and the Lenders party thereto.

"***Foreign Lender***" means a Lender that is not a U.S. Person.

"***Foreign Subsidiary***" means a Subsidiary of Borrower that is not a Domestic Subsidiary.

"***GAAP***" means generally accepted accounting principles in the United States of America, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board and in such other statements by such other entity as may be in general use by significant segments of the accounting profession that are applicable to the circumstances as of the date of determination. Subject to **Section 1.02**, all references to "GAAP" shall be to GAAP applied consistently with the principles used in the preparation of the financial statements described in **Section 7.04(a)**.

"***Governmental Approval***" means any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

"***Governmental Authority***" means any nation, government, branch of power (whether executive, legislative or judicial), state, province or municipality or other political subdivision thereof and any entity exercising executive, legislative, judicial, monetary, regulatory or administrative functions of or pertaining to government, including without limitation regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, courts, bodies, boards, tribunals and dispute settlement panels, and other law-, rule- or regulation-making organizations or entities of any State, territory, county, city or other political subdivision of the United States.

"***Guarantee***" of or by any Person (the "***guarantor***") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "***primary obligor***") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such

Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

"***Guarantee Assumption Agreement***" means a Guarantee Assumption Agreement substantially in the form of **Exhibit A** by an entity that, pursuant to **Section 8.12(a)**, is required to become a "Subsidiary Guarantor" hereunder in favor of the Lenders.

"***Guaranteed Obligations***" has the meaning set forth in **Section 13.01**.

"***Hazardous Material***" means any substance, element, chemical, compound, product, solid, gas, liquid, waste, by-product, pollutant, contaminant or material which is hazardous or toxic, and includes, without limitation, (a) asbestos, polychlorinated biphenyls and petroleum (including crude oil or any fraction thereof) and (b) any material classified or regulated as "hazardous" or "toxic" or words of like import pursuant to an Environmental Law.

"***Hedging Agreement***" means any interest rate exchange agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

"***Indebtedness***" of any Person means, without duplication, (a) all obligations of such Person for borrowed money or obligations of such Person with respect to deposits or advances of any kind by third parties, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty (j) obligations under any Hedging Agreement currency swaps, forwards, futures or derivatives transactions, and (k) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"***Indemnified Party***" has the meaning set forth in **Section 12.03(b)**.

"***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 and (b) to the extent not otherwise described in clause (a), Other Taxes.

"***Insolvency Proceeding***" means (i) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (ii) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of any Person's creditors generally or any substantial portion of such Person's creditors, in each case undertaken under U.S. Federal, state or foreign law, including the Bankruptcy Code.

"***Intellectual Property***" means all Patents, Trademarks, Copyright, and Technical Information, whether registered or not, domestic and foreign. Intellectual Property shall include all:

a) applications or registrations relating to such Intellectual Property;

b) rights and privileges arising under applicable Laws with respect to such Intellectual Property;

c) rights to sue for past, present or future infringements of such Intellectual Property; and

d) rights of the same or similar effect or nature in any jurisdiction corresponding to such Intellectual Property throughout the world.

"***Interest-Only Period***" means the period from and including the Closing Date and through and including the sixteenth (16th) Payment Date.

"***Interest Period***" means, with respect to each Borrowing, (i) initially, the period commencing on and including the Borrowing Date thereof and ending on and including the next Payment Date, and, (ii) thereafter, each period beginning on and including the day following the immediately preceding Interest Period and ending on and including the next succeeding Payment Date; *provided that* the term "Interest Period" shall include any period selected by the Majority Lenders from time to time in accordance with the definition of "Post-Default Rate".

"***Invention***" means any novel, inventive and useful art, apparatus, method, process, machine (including article or device), manufacture or composition of matter, or any novel, inventive and useful improvement in any art, method, process, machine (including article or device), manufacture or composition of matter.

"***Investment***" means, for any Person: (a) the acquisition (whether for cash, property, services or securities or otherwise) of capital stock, bonds, notes, debentures, partnership or other ownership interests or other securities of any other Person or any agreement to make any such acquisition (including any "short sale" or any sale of any securities at a time when such securities are not owned by the Person entering into such sale); (b) the making of any deposit with, or advance, loan or other extension of credit to, any other Person (including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise,

to resell such property to such Person), but excluding any such advance, loan or extension of credit having a term not exceeding 90 days arising in connection with the sale of inventory or supplies by such Person in the ordinary course of business; (c) the entering into of any Guarantee of, or other contingent obligation with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person; or (d) the entering into of any Hedging Agreement.

"***IRS***" means the U.S. Internal Revenue Service or any successor agency, and to the extent relevant, the U.S. Department of the Treasury.

"***Knowledge***" means the actual knowledge of any Responsible Officer of any Person or, so long as he is employed by the Borrower or its Subsidiaries, and the actual knowledge of Robert Anacone, so long as he is an executive officer of the Borrower.

"***Landlord Consent***" means each landlord consent with respect to the Borrower Facility duly executed and delivered by the Borrower in connection with this Agreement in form and substance satisfactory to Majority Lenders.

"***Laws***" means, collectively, all international, foreign, federal, state, provincial, territorial, municipal and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"***Lenders***" means Capital Royalty Partners II L.P., CRPPF, PIOP and CRPC, together with their successors and each assignee of a Lender pursuant to **Section 12.05(b)** and "Lender" means any one of them.

"***Lien***" means any mortgage, lien, pledge, charge or other security interest, or any lease, title retention agreement, mortgage, restriction, easement, right-of-way, option or adverse claim (of ownership or possession) or other encumbrance of any kind or character whatsoever or any preferential arrangement that has the practical effect of creating a security interest.

"***Liquidity***" means the balance of unencumbered (other than by Liens securing the Obligations and the Existing Term Loan Obligations) cash and Permitted Cash Equivalent Investments (which for greater certainty shall not include any undrawn credit lines), in each case, to the extent held in an account over which the Lenders have a first priority perfected security interest.

"***Loan***" means (i) each loan advanced by a Lender pursuant to **Section 2.01** and (ii) each PIK Loan deemed to have been advanced by a Lender pursuant to **Section 3.02(d)**. For purposes of clarification, any calculation of the aggregate outstanding principal amount of Loans on any date of determination shall include both the aggregate principal amount of loans advanced pursuant to **Section 2.01** and not yet repaid, and all PIK Loans deemed to have been advanced and not yet repaid, on or prior to such date of determination.

"***Loan Documents***" means, collectively, this Agreement, the Notes, the Security Documents, the Fee Letter, any subordination agreement or any intercreditor agreement entered into by Lenders with any other creditors of Obligors, including the Capital Royalty Intercreditor Agreement, and any other present or future document, instrument, agreement or certificate executed by Obligors for the benefit of Lenders in connection with this Agreement or any of the other Loan Documents, all as amended, restated, or otherwise modified.

"***Loss***" means judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any Claim or any proceeding relating to any Claim.

"***Majority Lenders***" means, at any time, Lenders having at such time in excess of 50% of the aggregate Commitments (or, if such Commitments are terminated, the outstanding principal amount of the Loans) then in effect, ignoring, in such calculation, the Commitments of and outstanding Loans owing to any Defaulting Lender.

"***Margin Stock***" means "margin stock" within the meaning of Regulations U and X.

"***Material Adverse Change***" and "***Material Adverse Effect***" mean a material adverse change in or effect on (i) the business, condition (financial or otherwise), operations, performance, Property or prospects of Borrower and its Subsidiaries taken as a whole, (ii) the ability of any Obligor to perform its obligations under the Loan Documents, or (iii) the legality, validity, binding effect or enforceability of the Loan Documents or the rights and remedies of the Lenders under any of the Loan Documents.

"***Material Agreements***" means (a) that certain Amended and Restated Development and Commercialization Agreement, dated January 4, 2013 by and between Borrower and DexCom, Inc., (b) that certain Research, Development and Commercialization Agreement, dated January 2, 2013, by and between Borrower and JDRF, and (c) the agreements required to be filed with the SEC as material contracts under Item 601(b)(10) of Regulation S-K of the Securities Act of 1933, as amended, excluding compensation arrangements. "Material Agreement" means any one such agreement.

"***Material Indebtedness***" means, at any time, any Indebtedness of any Obligor the outstanding principal amount of which, individually or in the aggregate, exceeds $500,000 (or the Equivalent Amount in other currencies).

"***Material Intellectual Property***" means, the Obligor Intellectual Property described in **Schedule 7.05(c)** and any other Obligor Intellectual Property after the date hereof the loss of which could reasonably be expected to have a Material Adverse Effect.

"***Maturity Date***" means the earlier to occur of (i) the twenty-fourth (24th) Payment Date following the Closing Date, and (ii) the date on which the Loans are accelerated pursuant to **Section 11.02**.

"***Maximum Rate***" has the meaning set forth in **Section 12.18.**

"***Medicare Tax***" means Section 1411 of the Code, as of the date of this Agreement (or any amended or successor version), and any regulations or official interpretations thereof.

"***Multiemployer Plan***" means any multiemployer plan, as defined in Section 400l(a)(3) of ERISA, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

"***Non-Consenting Lender***" has the meaning set forth in **Section 2.07(a)**.

"***Non-Disclosure Agreement***" has the meaning set forth in **Section 12.16**.

"***Note***" means a promissory note executed and delivered by the Borrower to the Lenders in accordance with **Section 2.04** or **3.02(d)**.

"***Notice of Borrowing***" has the meaning given to such term in **Section 2.02**.

"***Obligations***" means, with respect to any Obligor, all amounts, obligations, liabilities, covenants and duties of every type and description owing by such Obligor to any Lender, any other indemnitee hereunder or any participant, arising out of, under, or in connection with, any Loan Document, whether direct or indirect (regardless of whether acquired by assignment), absolute or contingent, due or to become due, whether liquidated or not, now existing or hereafter arising and however acquired, and whether or not evidenced by any instrument or for the payment of money, including, without duplication, (i) if such Obligor is the Borrower, all Loans, (ii) all interest, whether or not accruing after the filing of any petition in bankruptcy or after the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding, and (iii) all other fees, expenses (including fees, charges and disbursement of counsel), interest, commissions, charges, costs, disbursements, indemnities and reimbursement of amounts paid and other sums chargeable to such Obligor under any Loan Document.

"***Obligor Intellectual Property***" means Intellectual Property owned by or licensed to any of the Obligors.

"***Obligors***" means, collectively, the Borrower and the Subsidiary Guarantors and their respective successors and permitted assigns.

"***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 or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security

interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 5.05(g)**).

"***Participant***" has the meaning set forth in ***Section 12.05(e)***.

"***Patents***" is defined in the Security Agreement.

"***Payment Date***" means each March 31, June 30, September 30, December 31 and the Maturity Date, commencing on the first Payment Date to occur following the first Borrowing Date; *provided that*, if any such date shall occur on a day that is not a Business Day, the applicable Payment Date shall be the next preceding Business Day.

"***PBGC***" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"***Permitted Acquisition***" means any acquisition by the Borrower or any of its wholly-owned Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Equity Interests of, or a business line or unit or a division of, any Person; provided that:

(a) immediately prior to, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(b) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable Laws and in conformity with all applicable Governmental Approvals;

(c) in the case of the acquisition of all of the Equity Interests of such Person, all of the Equity Interests (except for any such securities in the nature of directors' qualifying shares required pursuant to applicable Law) acquired, or otherwise issued by such Person or any newly formed Subsidiary of the Borrower in connection with such acquisition, shall be owned 100% by the Borrower, a Subsidiary Guarantor or any other Subsidiary, and the Borrower shall have taken, or caused to be taken, as of the date such Person becomes a Subsidiary of the Borrower, each of the actions set forth in **Section 8.12**, if applicable;

(d) the Borrower and its Subsidiaries shall be in compliance with the financial covenants set forth in **Sections 10.01** and **10.03** on a pro forma basis after giving effect to such acquisition; and

(e) such Person (in the case of an acquisition of Equity Interests) or assets (in the case of an acquisition of assets or a division) (i) shall be engaged or used, as the case may be, in substantially the same business or lines of business in which the Borrower and/or its Subsidiaries are engaged or (ii) shall have a similar customer base as the Borrower and/or its Subsidiaries.

"***Permitted Cash Equivalent Investments***" means (i) marketable direct obligations issued

or unconditionally guaranteed by the United States, including obligations issued by a United States government sponsored enterprise, or any agency or any State thereof, or any political subdivision or municipality of any such State, provided such obligations that are long-term have a credit rating from Standard & Poor's Ratings Group or Fitch Rating of at least AA or from Moody's Investors Service, Inc. of at least Aa, and such municipal obligations that only have a short-term rating have a credit rating from Moody's Investors Service, Inc. of at least MIG1 or from Standard & Poor's Ratings Group of at least SP-1 having maturities of not more than two (2) years from the date of acquisition; (ii) commercial paper maturing no more than one (1) year after its creation and, at the time of acquisition, having a rating from either Standard & Poor's Ratings Group of at least A-1 or Moody's Investors Service, Inc. of at least P-1; (iii) certificates of deposit (including Eurodollar certificates of deposit), time deposits, overnight bank deposits or bankers' acceptances maturing within one (1) year from the date of acquisition thereof issued by any bank insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation having at the date of acquisition thereof combined capital and surplus of not less than $500,000,000 and, at the time of acquisition, having a rating from either Standard & Poor's Ratings Group of at least A-1 or Moody's Investors Service, Inc. of at least P-1; (iv) Investments in money market funds registered according to SEC Rule 2a-7 of the Investment Company Act of 1940, as amended, and that maintain a net asset value of $1.00 per share and maintain a minimum of $1,000,000,000 in assets; and (v) corporate bonds, including Eurodollar issues of United States domestic corporations, and U.S. dollar denominated issues of foreign corporations, provided such obligations have a credit rating from Standard & Poor's Ratings Group or Fitch Rating of at least AA or from Moody's Investors Service, Inc. of at least Aa.

"***Permitted Indebtedness***" means any Indebtedness permitted under **Section 9.01**.

"***Permitted Liens***" has the meaning set forth in **Section 9.02**.

"***Permitted Priority Debt***" means Indebtedness of the Borrower, in an amount not to exceed at any time 80% of the face amount at such time of the Borrower's eligible accounts receivable; *provided that* (a) such Indebtedness, if secured, is secured solely by the Borrower's accounts receivable and inventory, cash proceeds thereof, and cash and (b) the holders or lenders thereof have executed and delivered to Lenders an intercreditor agreement reasonably satisfactory to the Majority Lenders.

"***Permitted Refinancing***" means, with respect to any Indebtedness, any extensions, renewals and replacements of such Indebtedness; *provided that* such extension, renewal or replacement (i) shall not increase the outstanding principal amount of such Indebtedness, (ii) contains terms relating to outstanding principal amount, amortization, maturity, collateral (if any) and subordination (if any), and other material terms taken as a whole no less favorable in any material respect to the Borrower and its Subsidiaries or the Lenders than the terms of any agreement or instrument governing such existing Indebtedness, (iii) shall have an applicable interest rate which does not exceed the rate of interest of the Indebtedness being replaced, and (iv) shall not contain any new requirement to grant any lien or security or to give any guarantee that was not an existing requirement of such Indebtedness.

"***Permitted Restrictive Agreements***" has the meaning set forth in **Section 7.15**.

"***Permitted Subordinated Debt***" means Indebtedness:

(i) that is governed by documentation containing representations, warranties, covenants and events of default no more burdensome or restrictive than those contained in the Loan Documents, (ii) that has a maturity date later than the Maturity Date, (iii) in respect of which no cash payments of principal or interest are required prior to the Maturity Date, and (iv) in respect of which the holders have agreed in favor of the Borrower and Lenders that (A) prior to the date on which the Commitments have expired or been terminated and all Obligations have been paid in full indefeasibly in cash, such holders will not exercise any remedies available to them in respect of such Indebtedness, and (B) all Liens (if any) securing such Indebtedness are subordinated to the Liens securing the Obligations.

"***Person***" means any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or Governmental Authority or other entity of whatever nature.

"***PIK Loan***" has the meaning set forth in **Section 3.02(d)**.

"***PIK Period***" means the period beginning on the Closing Date and ending on the earlier to occur of (i) the sixteenth (16th) Payment Date after the Closing Date and (ii) the date on which any Event of Default shall have occurred (*provided that* if such Event of Default shall have been cured or waived, the PIK Period shall resume until the earlier to occur of the next Event of Default and the sixteenth (16th) Payment Date after the Closing Date).

"***PIOP***" means Parallel Investment Opportunities Partners II L.P., a Delaware limited partnership.

"***Plan***" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"***Post-Default Rate***" has the meaning set forth in **Section 3.02(b)**.

"***Prepayment Premium***" has the meaning set forth in **Section 3.03(a)**.

"***Product***" means the t:slim Insulin Delivery System or its successors, in a form substantially similar to that as approved by the U.S. Food and Drug Administration in November 2011.

"***Property***" of any Person means any property or assets, or interest therein, of such Person.

"***Proportionate Share***" means, with respect to any Lender, the percentage obtained by dividing (a) the sum of the Commitment (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of such Lender then in effect by (b) the sum of the Commitments (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of all

Lenders then in effect.

"***Qualified Plan***" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by any Obligor or any ERISA Affiliate thereof or to which any Obligor or any ERISA Affiliate thereof has ever made, or was ever obligated to make, contributions, and (ii) that is intended to be tax qualified under Section 401(a) of the Code.

"***Real Property Security Documents***" means the Landlord Consent and the Collateral Access Agreement, and any mortgage or deed of trust or any other real property security document executed or required hereunder or under the Security Agreement to be executed by any Obligor and granting a security interest in real Property owned or leased (as tenant) by any Obligor in favor of the Lenders.

"***Recipient***" means any Lender or any other recipient of any payment to be made by or on account of any Obligation.

"***Redemption Date***" has the meaning set forth in **Section 3.03(a)**.

"***Redemption Price***" has the meaning set forth in **Section 3.03(a)**.

"***Register***" has the meaning set forth in **Section 12.05(d)**.

"***Regulation T***" means Regulation T of the Board of Governors of the Federal Reserve System, as amended.

"***Regulation U***" means Regulation U of the Board of Governors of the Federal Reserve System, as amended.

"***Regulation X***" means Regulation X of the Board of Governors of the Federal Reserve System, as amended.

"***Regulatory Approvals***" means any registrations, licenses, authorizations, permits or approvals issued by any Governmental Authority and applications or submissions related to any of the foregoing.

"***Requirement of Law***" means, as to any Person, any statute, law, treaty, rule or regulation or determination, order, injunction or judgment of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its Properties or revenues.

"***Responsible Officer***" of any Person means the President, chief executive officer, chief operations officer/vice president of operations, or chief financial officer of such Person.

"***Restricted Payment***" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of the Borrower or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition,

cancellation or termination of any such shares of capital stock of the Borrower or any of its Subsidiaries or any option, warrant or other right to acquire any such shares of capital stock of the Borrower or any of its Subsidiaries.

"***Revenue***" of a Person means all revenue properly recognized under GAAP, consistently applied, less all rebates, discounts and other price allowances.

"***SBA***" means U.S. Small Business Administration.

"***SBIC***" means Small Business Investment Company.

"***SBIC Act***" means Small Business Investment Act of 1958, as amended.

"***Security Agreement***" means the Security Agreement, dated as of the date hereof, among the Obligors and the Lenders, granting a security interest in the Obligors' personal Property in favor of the Lenders.

"***Security Documents***" means, collectively, the Security Agreement, each Short-Form IP Security Agreement, each Real Property Security Document, and each other security document, control agreement or financing statement required or recommended to perfect Liens in favor of the Lenders.

"***Securities Account***" is defined in the Security Agreement.

"***Short-Form IP Security Agreements***" means short-form copyright, patent or trademark (as the case may be) security agreements entered into by one or more Obligors in favor of the Lenders, each in form and substance satisfactory to the Majority Lenders (and as amended, modified or replaced from time to time).

"***Solvent***" means, with respect to any Person at any time, that (a) the present fair saleable 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 saleable value of the Property 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 has not incurred and does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature and (d) such Person would not be unable to obtain a letter from its auditors that did not contain a going concern qualification.

"***Specified Financial Covenants***" has the meaning set forth in **Section 10.02(a)**.

"***Subordinated Debt Cure Right***" has the meaning set forth in **Section 10.02(a)**.

"***Subsidiary***" means, with respect to any Person (the "***parent***") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the

equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"***Subsidiary Guarantors***" means each of the Subsidiaries of the Borrower identified under the caption "SUBSIDIARY GUARANTORS" on the signature pages hereto and each Subsidiary of the Borrower that becomes, or is required to become, a "Subsidiary Guarantor" after the date hereof pursuant to **Section 8.12(a) or (b)**.

"***Substitute Lender***" has the meaning set forth in **Section 2.07(a)**.

"***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, additions to tax or penalties applicable thereto.

"***Technical Information***" means all trade secrets and other proprietary or confidential information, public information, non-proprietary know-how, any information of a scientific, technical, or business nature in any form or medium, standards and specifications, conceptions, ideas, innovations, discoveries, Invention disclosures, all documented research, developmental, demonstration or engineering work and all other information, data, plans, specifications, reports, summaries, experimental data, manuals, models, samples, know-how, technical information, systems, methodologies, computer programs, information technology and any other information.

"***Title IV Plan***" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by any Obligor or any ERISA Affiliate thereof or to which any Obligor or any ERISA Affiliate thereof has ever made, or was obligated to make, contributions, and (ii) that is or was subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA.

"***Trademarks***" is defined in the Security Agreement.

"***Transactions***" means the execution, delivery and performance by each Obligor of this Agreement and the other Loan Documents to which such Obligor is intended to be a party and the Borrowings (and the use of the proceeds of the Loans).

"***Use of Proceeds Statement***" has the meaning set forth in **Section 6.01(h)(xii)**.

"***U.S. Person***" means a "United States Person" within the meaning of Section 7701(a)(30) of the Code.

"***U.S. Tax Compliance Certificate***" has the meaning set forth in **Section 5.05(e)(ii)(B)(3)**.

"***Withdrawal Liability***" means, at any time, any liability incurred (whether or not assessed) by any ERISA Affiliate and not yet satisfied or paid in full at such time with respect to any Multiemployer Plan pursuant to Section 4201 of ERISA.

1.02 Accounting Terms and Principles. All accounting determinations required to be made pursuant hereto shall, unless expressly otherwise provided herein, be made in accordance with GAAP. All components of financial calculations made to determine compliance with this Agreement, including **Section 10**, shall be adjusted to include or exclude, as the case may be, without duplication, such components of such calculations attributable to any Acquisition consummated after the first day of the applicable period of determination and prior to the end of such period, as determined in good faith by the Borrower based on assumptions expressed therein and that were reasonable based on the information available to the Borrower at the time of preparation of the Compliance Certificate setting forth such calculations.

1.03 Interpretation. For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires, (a) the terms defined in this Agreement include the plural as well as the singular and vice versa; (b) words importing gender include all genders; (c) any reference to a Section, Annex, Schedule or Exhibit refers to a Section of, or Annex, Schedule or Exhibit to, this Agreement; (d) any reference to "this Agreement" refers to this Agreement, including all Annexes, Schedules and Exhibits hereto, and the words herein, hereof, hereto and hereunder and words of similar import refer to this Agreement and its Annexes, Schedules and Exhibits as a whole and not to any particular Section, Annex, Schedule, Exhibit or any other subdivision; (e) references to days, months and years refer to calendar days, months and years, respectively; (f) all references herein to "include" or "including" shall be deemed to be followed by the words "without limitation"; (g) the word "from" when used in connection with a period of time means "from and including" and the word "until" means "to but not including"; and (h) accounting terms not specifically defined herein shall be construed in accordance with GAAP (except for the term "property" , which shall be interpreted as broadly as possible, including, in any case, cash, securities, other assets, rights under contractual obligations and permits and any right or interest in any property, except where otherwise noted). Unless otherwise expressly provided herein, references to organizational documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all permitted subsequent amendments, restatements, extensions, supplements and other modifications thereto.

1.04 Changes to GAAP. If, after the date hereof, any change occurs in GAAP or in the application thereof and such change would cause any amount required to be determined for the purposes of the covenants to be maintained or calculated pursuant to **Section 8**, **9** or **10** to be materially different than the amount that would be determined prior to such change, then:

(a) the Borrower will provide a detailed notice of such change (an "***Accounting Change Notice***") to the Lenders (which requirement will be deemed satisfied by the description thereof in a Form 10-K, Form 10-Q or Form 8-K filed with the SEC);

(b) either the Borrower or the Majority Lenders may indicate within 90 days following the date of the Accounting Change Notice that they wish to revise the method of calculating such financial covenants or amend any such amount, in which case the parties will in good faith attempt to agree upon a revised method for calculating the financial covenants;

(c) until the Borrower and the Majority Lenders have reached agreement on such revisions, (i) such financial covenants or amounts will be determined without giving effect to

such change and (ii) all financial statements, Compliance Certificates and similar documents provided hereunder shall be provided together with a reconciliation between the calculations and amounts set forth therein before and after giving effect to such change in GAAP;

(d) if no party elects to revise the method of calculating the financial covenants or amounts, then the financial covenants or amounts will not be revised and will be determined in accordance with GAAP without giving effect to such change; and

(e) any Event of Default arising as a result of such change which is cured by operation of this **Section 1.04** shall be deemed to be of no effect *ab initio*.

SECTION 2
THE COMMITMENT

2.01 Commitments. Each Lender agrees severally, on and subject to the terms and conditions of this Agreement (including **Section 6**), to make a term loan (provided that PIK Loans shall be deemed not to constitute "term loans" for purposes of this **Section 2.01**) to the Borrower, on a Business Day during the Commitment Period in Dollars in an aggregate principal amount for such Lender not to exceed such Lender's Commitment (subject to any transfer of Commitments from PIOP to another Lender in accordance with **Section 8.16** if Borrower is not a "Small Business" within the meaning of the SBIC Act, and the regulations promulgated thereunder on the Closing Date); *provided*, *however*, that at no time shall any Lender be obligated to make a Loan in excess of such Lender's Proportionate Share of the amount by which the then effective Commitments exceeds the aggregate principal amount of Loans outstanding at such time. Amounts of Loans repaid may not be reborrowed.

2.02 Borrowing Procedures. Subject to the terms and conditions of this Agreement (including **Section 6**), the Borrowing of the term Loans described in **Section 2.01** shall be made on written notice in the form of **Exhibit B** given by the Borrower to the Lenders not later than 11:00 a.m. (Central time) on the Borrowing Notice Date (a "***Notice of Borrowing***").

2.03 Fees. The Borrower shall pay to the Lenders such fees as described in the Fee Letter.

2.04 Notes. If requested by any Lender, the Loans of such Lender shall be evidenced by one or more promissory notes (each a "***Note***"). The Borrower shall prepare, execute and deliver to the Lenders such promissory note(s) payable to the Lenders (or, if requested by the Lenders, to the Lenders and their registered assigns) and in the form attached hereto as **Exhibit C-1**. Thereafter, the Loans and interest thereon shall at all times (including after assignment pursuant to **Section 12.05**) be represented by one or more promissory notes in such form payable to the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

2.05 Use of Proceeds. The Borrower shall use the proceeds of the Loans for general working capital purposes and corporate purposes and to pay fees, costs and expenses incurred in connection with the Transactions; provided that the Lenders shall have no responsibility as to the use of any proceeds of Loans in the amount made by PIOP. Provided that PIOP is a Lender hereunder as of the Closing Date, no portion of any proceeds of Loans in the amount made by

PIOP (i) will be used to acquire realty or to discharge an obligation relating to the prior acquisition of realty; (ii) will be used outside of the United States (except to pay for services to be rendered outside the United States and to acquire from abroad inventory, material and equipment or property rights for use or sale in the United States, unless prohibited by Part 107.720 of the United States Code of Federal Regulations); or (iii) will be used for any purpose contrary to the public interest (including but not limited to activities which are in violation of law) or inconsistent with free competitive enterprise, in each case, within the meaning of Part 107.720 of Title 13 of the United States Code of Federal Regulations. Provided that PIOP is a Lender hereunder as of the Closing Date, Borrower will use the proceeds of the Loans in the amount made by PIOP for only those purposes specified in the SBA Form 1031 provided to the Lenders, and Borrower shall not violate any SBA regulations which may be applicable to it.

2.06 Defaulting Lenders.

(a) **Adjustments**. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that 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 **Section 12.04**.

(ii) **Reallocation of Payments.** Any payment of principal, interest, fees or other amounts received by the Lenders for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to **Section 11** or otherwise), shall be applied at such time or times as follows: first, as the Borrower may request (so long as no Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement; second, if so determined by the Majority Lenders and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of such Defaulting Lender to fund Loans under this Agreement; third, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fourth, so long as no 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 fifth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (A) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share and (B) such Loans were made at a time when the conditions set forth in **Section 6** were satisfied or waived, such payment shall be applied solely to pay the Loans of all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender. 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 pursuant to this **Section 2.06(a)(ii)** shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) **Defaulting Lender Cure**. If the Borrower and the Majority Lenders agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as necessary to cause the Loans to be held on a pro rata basis by the Lenders in accordance with their Proportionate Share, whereupon that 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.

2.07 Substitution of Lenders.

(a) **Substitution Right**. In the event that any Lender (an "***Affected Lender***"), (i) becomes a Defaulting Lender or (ii) does not consent to any amendment, waiver or consent to any Loan Document for which the consent of the Majority Lenders is obtained but that requires the consent of other Lenders (a "***Non-Consenting Lender***"), either the Borrower may pay in full such Affected Lender with respect to amounts due or such Affected Lender may be substituted by any willing Lender or Affiliate of any Lender or Eligible Transferee (in each case, a "***Substitute Lender***"); *provided that* any substitution of a Non-Consenting Lender shall occur only with the consent of Majority Lenders.

(b) **Procedure**. To substitute such Affected Lender or pay in full the Obligations owed to such Affected Lender, the Borrower shall deliver a notice to such Affected Lender. The effectiveness of such payment or substitution shall be subject to the delivery by the Borrower (or, as may be applicable in the case of a substitution, by the Substitute Lender) of (i) payment for the account of such Affected Lender, of, to the extent accrued through, and outstanding on, the effective date for such payment or substitution, all Obligations owing to such Affected Lender (which for the avoidance of doubt, shall not include any Prepayment Premium) and (ii) in the case of a substitution, an Assignment and Acceptance whereby the Substitute Lender shall, among other things, agree to be bound by the terms of the Loan Documents.

(c) **Effectiveness**. Upon satisfaction of the conditions set forth in **Section 2.07(a)** and **Section 2.07(b)** above, the Control Agent shall record such substitution or payment in the Register, whereupon (i) in the case of any payment in full of an Affected Lender, such Affected Lender's Commitments shall be terminated and (ii) in the case of any substitution of an Affected Lender, (A) such Affected Lender shall sell and be relieved of, and the Substitute Lender shall purchase and assume, all rights and claims of such Affected Lender under the Loan Documents, except that the Affected Lender shall retain such rights expressly providing that they survive the repayment of the Obligations and the termination of the Commitments, (B) such Substitute Lender shall become a "Lender" hereunder and (C) such Affected Lender shall execute and deliver an Assignment and Acceptance to evidence such substitution; *provided*, *however*, that the failure of any Affected Lender to execute any such Assignment and Acceptance shall not render such sale and purchase (or the corresponding assignment) invalid.

SECTION 3
PAYMENTS OF PRINCIPAL AND INTEREST

3.01 Repayment.

(a) **Repayment**. During the Interest-Only Period, no payments of principal of the Loans shall be due. Borrower agrees to repay to the Lenders the outstanding principal amount of the Loans, on each Payment Date occurring after the Interest-Only Period, in equal installments. The amounts of such installments shall be calculated by dividing (i) the sum of the aggregate principal amount of the Loans outstanding on the first day following the end of the Interest-Only Period, by (b) the number of Payment Dates remaining prior to the Maturity Date.

(b) **Application**. Any optional or mandatory prepayment of the Loans shall be applied to the installments thereof under **Section 3.01(a)** in the inverse order of maturity. To the extent not previously paid, the principal amount of the Loans, together with all other outstanding Obligations, shall be due and payable on the Maturity Date.

3.02 Interest.

(a) **Interest Generally**. Subject to **Section 3.02(d)**, Borrower agrees to pay to the Lenders interest on the unpaid principal amount of the Loans and the amount of all other outstanding Obligations, in the case of the Loans, for the period from the applicable Borrowing Date, and in the case of any other Obligation, from the date such other Obligation is due and payable, in each case, until paid in full, at a rate *per annum* equal to 11.50%.

(b) **Default Interest**. Notwithstanding the foregoing, upon the occurrence and during the continuance of any Event of Default, the interest payable pursuant to **Section 3.02(a)** shall increase automatically by 4.00% *per annum* (such aggregate increased rate, the "***Post-Default Rate***"). Notwithstanding any other provision herein (including **Section 3.02(d)**), if interest is required to be paid at the Post-Default Rate, it shall be paid entirely in cash. If any Obligation is not paid when due under the applicable Loan Document, the amount thereof shall accrue interest at a rate equal to 4.00% *per annum* (without duplication of interest payable at the Post-Default Rate).

(c) **Interest Payment Dates**. Accrued interest on the Loans shall be payable in arrears on the last day of each Interest Period in cash, and upon the payment or prepayment thereof (on the principal amount so paid or prepaid); *provided that* interest payable at the Post-Default Rate shall be payable from time to time on demand.

(d) **Paid In-Kind Interest**. Notwithstanding **Section 3.01(a)**, at any time during the PIK Period, the Borrower may elect to pay the interest on the outstanding principal amount of the Loans payable pursuant to **Section 3.01** as follows: (i) only 9.50% of the 11.50% *per annum* interest in cash and (ii) 2.00% of the 11.50% *per annum* interest as compounded interest, added to the aggregate principal amount of the Loans (the amount of any such compounded interest being a "***PIK Loan***"). Each PIK Loan shall be evidenced by a Note in the form of **Exhibit C-2**. The principal amount of each PIK Loan shall accrue interest in accordance with the provisions of this Agreement applicable to the Loans.

3.03 Prepayments.

(a) **Optional Prepayments**. The Borrower shall have the right optionally to prepay the outstanding principal amount of the Loans in whole or in part on any Payment Date (a "***Redemption Date***") for an amount equal to the aggregate principal amount of the Loans being prepaid plus the Prepayment Premium plus any accrued but unpaid interest and any fees which are due and owing (such aggregate amount, the "***Redemption Price***"). The applicable "***Prepayment Premium***" shall be an amount calculated pursuant to **Section 3.03(a)(i)**.

(i) If the Redemption Date occurs:

(A) on or prior to the fourth Payment Date, the Prepayment Premium shall be an amount equal to 3.00% of the aggregate outstanding principal amount of the Loans being prepaid on such Redemption Date;

(B) after the fourth Payment Date, and on or prior to the eighth Payment Date, the Prepayment Premium shall be an amount equal to 2.00% of the aggregate outstanding principal amount of the Loans being prepaid on such Redemption Date;

(C) after the eighth Payment Date, and on or prior to the twelfth Payment Date, the Prepayment Premium shall be an amount equal to 1.00% of the aggregate outstanding principal amount of the Loans being prepaid on such Redemption Date;

(D) after the twelfth Payment Date, the Prepayment Premium shall be an amount equal to 0.00% of the aggregate outstanding principal amount of the Loans being prepaid on such Redemption Date.

(ii) To determine the aggregate outstanding principal amount of the Loans, and how many Payment Dates have occurred, as of any Redemption Date for purposes of **Section 3.03(a)(i)**, the number of Payment Dates shall be deemed to be the number of Payment Dates that shall have occurred following the Closing Date.

(iii) No partial prepayment shall be made under this **Section 3.03(a)** except in connection with any event described in **Section 3.03(b)** and then only to the extent provided in **Section 3.03(b)**.

(iv) On or prior to the Redemption Date, the Lenders may notify Borrower of a reduction in the amounts due under **Section 3.03(a)(i)** with respect to any portion of the Loans held by any entity licensed by the SBA as an SBIC.

(b) **Mandatory Prepayments.**

(i) **Asset Sales.** In the event of any contemplated Asset Sale not permitted under **Section 9.09**, the Borrower shall provide 30 days' prior written notice of such Asset Sale to the Lenders and, if within such notice period Majority Lenders advise the Borrower that a prepayment is required pursuant to this **Section 3.03(b)(i)**, the Borrower shall: (x) if the assets sold represent substantially all of the assets or revenues of the Borrower, or represent any specific line of business which either on its own or together with other lines of business sold over

the term of this Agreement account for revenue generated by such lines of business exceeding 10% of the revenue of the Borrower in the immediately preceding year, prepay the aggregate outstanding principal amount of the Loans in an amount equal to the Redemption Price applicable on the date of such Asset Sale in accordance with **Section 3.03(a)**, and (y) in the case of all other Asset Sales not described in the foregoing **clause (x)**, prepay the Loans in an amount equal to the entire amount of the Asset Sale Net Proceeds of such Asset Sale, plus any accrued but unpaid interest and any fees which are due and owing, credited in the following order:

(A) first, in reduction of the Borrower's obligation to pay any unpaid interest and any fees which are due and owing;

(B) second, in reduction of the Borrower's obligation to pay any Claims or Losses referred to in **Section 12.03** which are due and owing;

(C) third, in reduction of the Borrower's obligation to pay any amounts due and owing on account of the unpaid principal amount of the Loans;

(D) fourth, in reduction of any other Obligation which are due and owing; and

(E) fifth, to the Borrower or such other Persons as may lawfully be entitled to or directed by the Borrower to receive the remainder.

(ii) **Change of Control.** In the event of a Change of Control, the Borrower shall immediately provide notice of such Change of Control to the Lenders and, if within 10 days of receipt of such notice Majority Lenders notify the Borrower in writing that a prepayment is required pursuant to this **Section 3.03(b)(ii)**, the Borrower shall prepay the aggregate outstanding principal amount of the Loans in an amount equal to the Redemption Price applicable on the date of such Change of Control in accordance with **Section 3.03(a)**.

SECTION 4
PAYMENTS, ETC.

4.01 Payments.

(a) **Payments Generally**. Each payment of principal, interest and other amounts to be made by the Obligors under this Agreement or any other Loan Document shall be made in Dollars, in immediately available funds, without deduction, set off or counterclaim, to an account to be designated by the Majority Lenders by notice to the Borrower, not later than 4:00 p.m. (Central time) on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day).

(b) **Application of Payments.** Each Obligor shall, at the time of making each payment under this Agreement or any other Loan Document, specify to the Lenders the amounts payable by such Obligor hereunder to which such payment is to be applied (and in the event that

Obligors fail to so specify, or if an Event of Default has occurred and is continuing, the Lenders may apply such payment in the manner they determine to be appropriate).

(c) **Non-Business Days**. If the due date of any payment under this Agreement (other than of principal of or interest on the Loans) would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

4.02 Computations. All computations of interest and fees hereunder shall be computed on the basis of a year of 360 days and actual days elapsed (including the first day but excluding the last day) occurring in the period for which payable.

4.03 Notices. Each notice of optional prepayment shall be effective only if received by the Lenders not later than 4:00 p.m. (Central time) on the date one Business Day prior to the date of prepayment. Each notice of optional prepayment shall specify the amount to be prepaid and the date of prepayment.

4.04 Set-Off.

(a) **Set-Off Generally**. Upon the occurrence and during the continuance of any Event of Default, the Lenders and each of their Affiliates are hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Lenders or such Affiliate to or for the credit or the account of the Borrower against any and all of the Obligations, whether or not the Lenders shall have made any demand and although such obligations may be unmatured. The Lenders agree promptly to notify the Borrower after any such set-off and application, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Lenders and their Affiliates under this **Section 4.04** are in addition to other rights and remedies (including other rights of set-off) that the Lenders and their Affiliates may have.

(b) **Exercise of Rights Not Required**. Nothing contained herein shall require the Lenders to exercise any such right or shall affect the right of the Lenders to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of Borrower.

SECTION 5
YIELD PROTECTION, ETC.

5.01 Additional Costs.

(a) **Change in Requirements of Law Generally**. If, on or after the date hereof, the adoption of any Requirement of Law, or any change in any Requirement of Law, or any change in the interpretation or administration thereof by any court or other Governmental Authority charged with the interpretation or administration thereof, or compliance by any of the Lenders (or its lending office) with any request or directive (whether or not having the force of law) of any such Governmental Authority, shall impose, modify or deem applicable any reserve

(including any such requirement imposed by the Board of Governors of the Federal Reserve System), special deposit, contribution, insurance assessment or similar requirement, in each case that becomes effective after the date hereof, against assets of, deposits with or for the account of, or credit extended by, a Lender (or its lending office) or shall impose on a Lender (or its lending office) any other condition affecting the Loans or the Commitment, and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining the Loans, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or any other Loan Document, by an amount deemed by such Lender to be material (other than with respect to Taxes), then the Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender for such increased cost or reduction.

(b) **Change in Capital Requirements**. If a Lender shall have determined that, on or after the date hereof, the adoption of any Requirement of Law regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or any request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, in each case that becomes effective after the date hereof, has or would have the effect of reducing the rate of return on capital of a Lender (or its parent) as a consequence of a Lender's obligations hereunder or the Loans to a level below that which a Lender (or its parent) could have achieved but for such adoption, change, request or directive by an amount reasonably deemed by it to be material, then the Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender (or its parent) for such reduction.

(c) **Notification by Lender**. The Lenders will promptly notify the Borrower of any event of which it has knowledge, occurring after the date hereof, which will entitle a Lender to compensation pursuant to this **Section 5.01**. Before giving any such notice pursuant to this **Section 5.01(c)** such Lender shall designate a different lending office if such designation (x) will, in the reasonable judgment of such Lender, avoid the need for, or reduce the amount of, such compensation and (y) will not, in the reasonable judgment of such Lender, be materially disadvantageous to such Lender. A certificate of the Lender claiming compensation under this **Section 5.01**, setting forth the additional amount or amounts to be paid to it hereunder, shall be conclusive and binding on the Borrower in the absence of manifest error.

(d) Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) 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 constitute a change in Requirements of Law for all purposes of this **Section 5**, regardless of the date enacted, adopted or issued.

(e) Notwithstanding anything herein to the contrary, no amounts shall be payable by the Borrower under this **Section 5** if the Loan is assigned to a Lender (or is originated by a Lender) whose status as a Lender, whether as a Foreign Lender or because the structure of the Lender, is different than that of either Capital Royalty Partners II L.P., CRPPF, PIOP or CRPC

and such amounts would not be payable on the date hereof if such Lender had been Capital Royalty Partners II L.P., CRPPF, PIOP or CRPC.

5.02 Reserved.

5.03 Illegality. Notwithstanding any other provision of this Agreement, in the event that on or after the date hereof the adoption of or any change in any Requirement of Law or in the interpretation or application thereof by any competent Governmental Authority shall make it unlawful for a Lender or its lending office to make or maintain the Loans (and, in the opinion of such Lender, the designation of a different lending office would either not avoid such unlawfulness or would be disadvantageous to such Lender), then such Lender shall promptly notify the Borrower thereof following which (a) the Lender's Commitment shall be suspended until such time as such Lender may again make and maintain the Loans hereunder and (b) if such Requirement of Law shall so mandate, the Loans shall be prepaid by the Borrower on or before such date as shall be mandated by such Requirement of Law in an amount equal to the Redemption Price applicable on the date of such prepayment in accordance with **Section 3.03(a)**.

5.04 Reserved.

5.05 Taxes.

(a) **Payments Free of Taxes**. Any and all payments by or on account of any Obligation shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law requires the deduction or withholding of any Tax from any such payment by an Obligor, then such Obligor shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by such Obligor 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**) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) **Payment of Other Taxes by the Borrower**. The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of each Lender, timely reimburse it for, Other Taxes.

(c) **Evidence of Payments**. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this **Section 5**, the Borrower shall deliver to each Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment.

(d) **Indemnification.** The Borrower shall reimburse and indemnify each Recipient, within 10 days after written 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**) 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 Lender shall be conclusive absent manifest error.

(e) **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 timely deliver to the Borrower such properly completed and executed documentation reasonably requested by the Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender shall deliver such other documentation prescribed by applicable law as reasonably requested by the Borrower as will enable the Borrower 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 5.05(e)(ii)(A), (B) (C) or (D))** shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that Borrower is a U.S. Person:

(A) any Lender that is a U.S. Person shall deliver to the Borrower 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), executed originals of IRS Form W-9 (or successor form) certifying that such Lender is exempt from U.S. Federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower (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), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN (or successor form) establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN (or successor form) establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed originals of IRS Form W-8ECI (or successor form);

(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 D** 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 originals of IRS Form W-8BEN; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY (or successor form), accompanied by IRS Form W-8ECI (or successor form), IRS Form W-8BEN (or successor form), a U.S. Tax Compliance Certificate, IRS Form W-9 (or successor form), 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 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 (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), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made; and

(D) any Foreign Lender shall deliver to the Borrower any forms and information necessary to establish that the Foreign Lender is not subject to withholding tax under FATCA.

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 in writing of its legal inability to do so.

(f) **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** (including by the payment of additional amounts pursuant to this **Section 5**), 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** 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 (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 **Section 5.05(f)**, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this

Section 5.05(f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This **Section 5.05(f)** 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.

(g) **Mitigation Obligations**. If the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or to any Governmental Authority for the account of any Lender pursuant to **Section 5.01** or this **Section 5.05**, then such Lender shall (at the request of the Borrower) use commercially reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign and delegate its rights and obligations hereunder to another of its offices, branches or Affiliates if, in the sole reasonable judgment of such Lender, such designation or assignment and delegation would (i) eliminate or reduce amounts payable pursuant to **Section 5.01** or this **Section 5.05**, as the case may be, in the future, (ii) not subject such Lender to any unreimbursed cost or expense and (iii) 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 and delegation.

SECTION 6
CONDITIONS PRECEDENT

6.01 Conditions to Initial Borrowing. The obligation of each Lender to make a Loan as part of the first Borrowing hereunder shall not become effective until the following conditions precedent shall have been satisfied or waived in writing by the Majority Lenders:

(a) **Borrowing Date**. Such Borrowing shall be at Borrower's option; *provided that* such Borrowing shall not occur later than March 31, 2015.

(b) **Amount of Initial Borrowing**. The amount of such Borrowing shall not exceed $30,000,000.

(c) **No Other Secured Debt**. On the Closing Date, no Obligor shall have any secured Indebtedness outstanding or available to be drawn, other than under this Agreement, the Existing Term Loan Agreement, and any Permitted Indebtedness.

(d) **Terms of Material Agreements, Etc**. Lenders shall be satisfied reasonably with the terms and conditions of all of the Obligors' Material Agreements set forth on **Schedule 7.14** hereto.

(e) **No Law Restraining Transactions**. No applicable law or regulation shall restrain, prevent or, in the reasonable judgment of the Lenders, impose materially adverse conditions upon the Transactions.

(f) **Payment of Fees**. Lenders shall be satisfied with the arrangements to deduct the fees set forth herein from the proceeds advanced.

(g) **Updated Lien Searches**. Lenders shall be satisfied with updated Lien searches prior to the Closing Date showing that no Liens exist on the Collateral other than Permitted Liens.

(h) **Documentary Deliveries**. The Lenders shall have received the following documents, each of which shall be in form and substance satisfactory to the Lenders:

(i) **Agreement.** This Agreement duly executed and delivered by the Borrower and each of the other parties hereto.

(ii) **Security Documents**.

(A) The Security Agreement, duly executed and delivered by each of the Obligors;

(B) Each of the Short-Form IP Security Agreements, duly executed and delivered by the applicable Obligor;

(C) Evidence of filing of UCC-1 financing statements against each Obligor in its jurisdiction of formation or incorporation, as the case may be;

(D) Evidence of filing of each of the Short-Form IP Security Agreements in the United States Patent and Trademark Office; and

(E) Without limitation, all other documents and instruments reasonably required to perfect the Lenders' Lien on, and security interest in, the Collateral required to be delivered on or prior to the Closing Date (including delivery of any capital stock certificates and undated stock powers executed in blank) shall have been duly executed and delivered and be in proper form for filing, and shall create in favor of the Lenders, a perfected Lien on, and security interest in, the Collateral, subject to no Liens other than Permitted Liens.

(iii) **Intercreditor Agreement.** The Amended and Restated Intercreditor Agreement, dated as of the date hereof, relating to the Permitted Priority Debt, duly executed and delivered by the Existing Term Loan Lenders, the Lenders hereto, and Silicon Valley Bank.

(iv) **Capital Royalty Intercreditor Agreement.** The Capital Royalty Intercreditor Agreement, duly executed and delivered by the Existing Term Loan Lenders and the Lenders hereto.

(v) **Notes.** Any Notes requested in accordance with Section 2.04.

(vi) **Approvals.** Certified copies of all material licenses, consents, authorizations and approvals of, and notices to and filings and registrations with, any Governmental Authority (including all foreign exchange approvals), and of all third-party consents and approvals, necessary in connection with the making and performance by the Obligors of the Loan Documents and the Transactions.

(vii) **Corporate Documents**. Certified copies (as of a recent date) of the constitutive documents of each Obligor (if publicly available in such Obligor's jurisdiction of formation) and of resolutions of the Board of Directors (or shareholders, if applicable) of each Obligor authorizing the making and performance by it of the Loan Documents to which it is a party.

(viii) **Incumbency Certificate**. A certificate of each Obligor as to the authority, incumbency and specimen signatures of the persons who have executed the Loan Documents and any other documents in connection herewith on behalf of the Obligors.

(ix) **Officer's Certificate**. A certificate, dated the Closing Date and signed by the President, a Vice President or a financial officer of Borrower, confirming compliance with the conditions set forth in **Section 6.02**.

(x) **Opinions of Counsel**. A favorable opinion, dated the Closing Date, of counsel to each Obligor in form acceptable to the Lenders and their counsel.

(xi) **Insurance**. Certificates of insurance evidencing the existence of commercial liability and property loss insurance required to be maintained by the Borrower pursuant to **Section 8.05** and the designation of the Lenders as the loss payees or additional named insured, as the case may be, thereunder.

(xii) **SBA Forms**. Provided that PIOP is a Lender hereunder as of the Closing Date, completed SBA Forms 480, 652, and 1031 (Parts A and B), showing Borrower's financial projections (including balance sheets and income and cash flow statements) for the period described therein and a representation to PIOP of Borrower's intended use of proceeds of the Loans (the "***Use of Proceeds Statement***").

6.02 Conditions to Each Borrowing. The obligation of each Lender to make a Loan as part of any Borrowing hereunder (including the first Borrowing) is also subject to satisfaction of the following further conditions precedent on the applicable Borrowing Date:

(a) **Commitment Period**. Such Borrowing Date shall occur during the Commitment Period.

(b) **No Default; Representations and Warranties**. Both immediately prior to the making of such Loan and after giving effect thereto and to the intended use thereof:

(i) no Default shall have occurred and be continuing; and

(ii) the representations and warranties made by the Borrower in **Section 7** (other than (i) **Section 7.20** if PIOP is not a Lender as of the Closing Date or (ii) **Sections 7.20(a) or (b)**, if following the Closing Date, Borrower ceases to be a "Small Business" within the meaning of the SBIC Act, and the regulations promulgated thereunder), shall be true on and as of the Borrowing Date and immediately after giving effect to the application of the proceeds of the Borrowing with the same force and effect as if made on and as of such date, except that

the representation regarding representations and warranties that refer to a specific earlier date shall be that they were true on such earlier date.

(c) **Financing Fee**. Except in the case of any PIK Loan, each Lender shall have received its portion of the fees payable pursuant to **Section 2.03**.

(d) **Notice of Borrowing**. Except in the case of any PIK Loan, Capital Royalty Partners II L.P. shall have received a Notice of Borrowing as and when required pursuant to **Section 2.02**.

Each Borrowing shall constitute a certification by the Borrower to the effect that the conditions set forth in this **Section 6.02** have been fulfilled as of the applicable Borrowing Date.

SECTION 7
REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lenders that:

7.01 Power and Authority. Each of the Borrower and its Subsidiaries (a) is duly organized and validly existing under the laws of its jurisdiction of organization, (b) has all requisite corporate or other power, and has all material governmental licenses, authorizations, consents and approvals necessary to own its assets and carry on its business as now being or as proposed to be conducted except to the extent that failure to have the same could not reasonably be expected to have a Material Adverse Effect, (c) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure so to qualify could (either individually or in the aggregate) reasonably be expected to result in a Material Adverse Effect, (d) has full power, authority and legal right to make and perform each of the Loan Documents to which it is a party and, in the case of the Borrower, to borrow the Loans hereunder and (e) is in material compliance with all applicable Laws to which it is subject and all Material Agreements to which it is a party.

7.02 Authorization; Enforceability. The Transactions are within each Obligor's corporate powers and have been duly authorized by all necessary corporate and, if required, by all necessary shareholder action. This Agreement has been duly executed and delivered by each Obligor and constitutes, and each of the other Loan Documents to which it is a party when executed and delivered by such Obligor will constitute, a legal, valid and binding obligation of such Obligor, enforceable against each Obligor in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

7.03 Governmental and Other Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any third party, except for (i) such as have been obtained or made and are in full force and effect, (ii) filings and recordings in respect of the Liens created pursuant

to the Security Documents, (iii) as disclosed in **Schedule 7.03**, and (iv) such consents or approvals the absence of which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, (b) will not violate any applicable law or regulation or the charter, bylaws or other organizational documents of Borrower and its Subsidiaries or any order of any Governmental Authority, other than any such violations that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, (c) will not violate or result in a default under any Material Agreement, or give rise to a right thereunder to require any payment to be made by any such Person, and (d) except for the Liens created pursuant to the Security Documents, will not result in the creation or imposition of any Lien on any asset of Borrower and its Subsidiaries.

7.04 Financial Statements; Material Adverse Change.

(a) **Financial Statements**. The Borrower has heretofore furnished to the Lenders certain financial statements as provided for in **Section 8.01**. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the previously-delivered statements of the type described in **Section 8.01(b)**. Neither the Borrower nor any of its Subsidiaries has any material contingent liabilities or unusual forward or long-term commitments not disclosed in the aforementioned financial statements and which in any case is material in relation to the business, operations, properties, assets or condition (financial or otherwise) of Borrower and its Subsidiaries taken as a whole.

(b) **No Material Adverse Change**. Since December 31, 2013, there has been no Material Adverse Change.

7.05 Properties.

(a) **Property Generally**. Each Obligor has good and marketable fee simple title to, or valid leasehold interests in, all its real and personal property material to its business, subject only to Permitted Liens and except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) **Intellectual Property**. The Obligors represent and warrant to the Lenders as of the date hereof as follows, and the Obligors acknowledge that the Lenders are relying on such representations and warranties in entering into this Agreement:

(i) **Schedule 7.05(b)** contains:

(A) a complete and accurate list, as of March 19, 2014, of all applied for or registered Patents, including the jurisdiction and patent number;

(B) a complete and accurate list, as of March 19, 2014, of all applied for or registered Trademarks, including the jurisdiction, trademark application or registration number and the application or registration date; and

(C) a complete and accurate list, as of March 19, 2014, of all applied for or registered Copyrights;

(ii) Each Obligor is the absolute beneficial owner of all right, title and interest in and to Material Intellectual Property listed on **Schedule 7.05(c)** as owned by such Obligor with good and marketable title, free and clear of any Liens of any kind whatsoever other than Permitted Liens. Without limiting the foregoing, and except as set forth in **Schedule 7.05(b)**:

(A) other than with respect to the Material Agreements and licenses implied by the sale of a product to end retail users, or as permitted by **Section 9.09** below, the Obligors have not transferred ownership of Material Intellectual Property listed on **Schedule 7.05(c)** as owned by such Obligors, in whole or in part, to any other Person who is not an Obligor;

(B) other than (i) the Material Agreements, (ii) customary restrictions in in-bound licenses of Intellectual Property and non-disclosure agreements, or (iii) as would have been or is permitted by **Section 9.09** below, there are no judgments, covenants not to sue, permits, grants, licenses, Liens (other than Permitted Liens), or other agreements or arrangements relating to Borrower's Material Intellectual Property, including any development, submission, services, research, license or support agreements, which bind, obligate or otherwise restrict the Obligors in any manner that would reasonably be expected to have a Material Adverse Effect;

(C) the use of any of the Obligor Intellectual Property in the business of the Borrower as currently conducted or as currently contemplated to be conducted, to the best of Borrower's Knowledge, does not breach, violate, infringe or interfere with or constitute a misappropriation of any valid rights arising under any Intellectual Property of any other Person;

(D) there are no pending or, to Borrower's Knowledge, threatened in writing Claims against the Obligors asserted by any other Person relating to the Obligor Intellectual Property owned by or exclusively licensed to Obligors, including any Claims of adverse ownership, invalidity, infringement, misappropriation, violation or other opposition to or conflict with such Intellectual Property, except as could not reasonably be expected to have a Material Adverse Effect; the Obligors have not received any written notice from any Person that the Borrower's business, the use of the Obligor Intellectual Property in the business of the Borrower as currently conducted, or the manufacture, use or sale of any product or the performance of any service by the Borrower infringes upon, violates or constitutes a misappropriation of, or may infringe upon, violate or constitute a misappropriation of, or otherwise interfere with, any other Intellectual Property of any other Person;

(E) the Obligors have no Knowledge that the Obligor Intellectual Property owned by or exclusively licensed to Obligors is being infringed, violated, misappropriated or otherwise used by any other Person without the express authorization of the Obligors. Without limiting the foregoing, the Obligors have not put any other Person on notice of actual or potential infringement, violation or misappropriation of any of the Material Intellectual Property owned by or exclusively licensed to Obligors; the Obligors have not

initiated the enforcement of any Claim with respect to any of the Obligor Intellectual Property owned by or exclusively licensed to Obligors;

(F) all relevant current and former employees and contractors of Borrower have executed written confidentiality and invention assignment Contracts with Borrower that irrevocably assign to Borrower or its designee all of their rights to any Inventions relating to Borrower's business that are conceived or reduced to practice by such employees within the scope of their employment or by such contractors within the scope of their contractual relationship with Borrower, to the extent permitted by applicable law;

(G) to the Knowledge of the Obligors, the Obligor Intellectual Property is all the Intellectual Property necessary for the operation of the Borrower's business as it is currently conducted or as currently contemplated to be conducted, except for such Intellectual Property the absence of which could not reasonably be expected to have a Material Adverse Effect;

(H) the Obligors have taken reasonable precautions to protect the secrecy, confidentiality and value of its Material Intellectual Property consisting of trade secrets and confidential information, except as could not reasonably be expected to have a Material Adverse Effect.

(I) each Obligor has delivered or otherwise made available to the Lenders accurate and complete copies of all Material Agreements relating to the Obligor Intellectual Property;

(J) there are no pending or, to the Knowledge of any of the Obligors, threatened in writing Claims against the Obligors asserted by any other Person relating to the Material Agreements, including any Claims of breach or default under such Material Agreements, except as could not reasonably be expected to have a Material Adverse Effect;

(iii) With respect to the Material Intellectual Property owned by or for which prosecution is controlled by Obligors consisting of issued Patents, except as set forth in **Schedule 7.05(b)**, and without limiting the representations and warranties in **Section 7.05(b)(ii)**:

(A) each of the issued claims in such Patents, to Borrower's Knowledge, is valid and enforceable;

(B) the inventors listed in such Patents have executed written Contracts with the Borrower or its predecessor-in-interest that properly and irrevocably assigns to Borrower or its predecessor-in-interest all of their rights to any of the Inventions claimed in such Patents to the extent permitted by applicable law;

(C) none of the Patents, or the Inventions claimed in them, have been dedicated to the public except as a result of intentional decisions made by the applicable Obligor;

(D) to Borrower's Knowledge, all prior art material to such Patents was adequately disclosed to or considered by the respective patent offices during prosecution of such Patents to the extent required by applicable law or regulation;

(E) subsequent to the issuance of such Patents, neither the Borrower nor any Subsidiary Guarantors or their predecessors in interest, have filed any disclaimer or filed any other voluntary reduction in the scope of the Inventions claimed in such Patents;

(F) no subject matter of such Patents, to Borrower's Knowledge, is subject to any competing conception claims of subject matter of any patent applications or patents of any third party and have not been the subject of any interference, re-examination or opposition proceedings, nor are the Obligors aware of any basis for any such interference, re-examination or opposition proceedings;

(G) no such Patents, to Borrower's Knowledge, have ever been finally adjudicated to be invalid, unpatentable or unenforceable for any reason in any administrative, arbitration, judicial or other proceeding, and, with the exception of publicly available documents in the applicable Patent Office recorded with respect to any Patents, the Obligors have not received any written notice asserting that such Patents are invalid, unpatentable or unenforceable; if any of such Patents is terminally disclaimed to another patent or patent application, all patents and patent applications subject to such terminal disclaimer are included in the Collateral;

(H) the Obligors have not received an opinion which concludes that a challenge to the validity or enforceability of any of such Patents is more likely than not to succeed;

(I) the Obligors have no Knowledge that they or any prior owner of such Patents or their respective agents or representatives have engaged in any conduct, or omitted to perform any necessary act, the result of which would invalidate or render unpatentable or unenforceable any such Patents; and

(J) all maintenance fees, annuities, and the like due or payable on the Patents have been timely paid or the failure to so pay was the result of an intentional decision by the applicable Obligor or would not reasonably be expected to result in a Material Adverse Effect.

(iv) none of the foregoing representations and statements of fact contains any untrue statement of material fact or omits to state any material fact necessary to make any such statement or representation not misleading to a prospective Lender with respect to the Material Intellectual Property; provided that this representation and warranty in this subsection (iv) is only as to the Knowledge of the Borrower with respect to any Material Intellectual Property licensed to any of the Obligors.

(c) **Material Intellectual Property**. **Schedule 7.05(c)** contains a complete and accurate list of the Obligor Intellectual Property the loss of which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect upon the Borrower's

business with an indication as to whether the applicable Obligor owns or has an exclusive or non-exclusive license to such Obligor Intellectual Property.

7.06 No Actions or Proceedings.

(a) **Litigation**. There is no litigation, investigation or proceeding pending or, to the best of the Borrower's Knowledge, threatened with respect to the Borrower and its Subsidiaries by or before any Governmental Authority or arbitrator (i) that either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect, except as specified in **Schedule 7.06** or (ii) that involves this Agreement or the Transactions.

(b) **Environmental Matters**. The operations and Property of Borrower and its Subsidiaries comply with all applicable Environmental Laws, except to the extent the failure to so comply (either individually or in the aggregate) could not reasonably be expected to have a Material Adverse Effect.

(c) **Labor Matters**. The Borrower has not engaged in unfair labor practices and there are no material labor actions or disputes involving the employees of the Borrower.

7.07 Compliance with Laws and Agreements. Each of the Obligors is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

7.08 Taxes. Except as set forth on **Schedule 7.08**, each of the Obligors has timely filed or caused to be filed all tax returns and reports required to have been filed and has paid or caused to be paid all taxes required to have been paid by it, except taxes that are being contested in good faith by appropriate proceedings and for which such Obligor has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

7.09 Full Disclosure. The Borrower has disclosed to the Lenders all Material Agreements to which any Obligor is subject. None of the reports, financial statements, certificates or other information furnished by or on behalf of the Obligors to the Lenders in connection with the negotiation of this Agreement and the other Loan Documents or delivered hereunder or thereunder (as modified or supplemented by other information so furnished) contains any material misstatement of 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, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

7.10 Regulation.

(a) **Investment Company Act**. Neither Borrower nor any of its Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

(b) **Margin Stock**. Neither Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock, and no part of the proceeds of the Loans will be used to buy or carry any Margin Stock in violation of Regulation T, U or X.

7.11 Solvency. Borrower is and, immediately after giving effect to the Borrowing and the use of proceeds thereof will be, Solvent.

7.12 Subsidiaries. **Schedule 7.12** is a complete and correct list of all Subsidiaries of the Borrower as of the date hereof, each such Subsidiary is duly organized and validly existing under the jurisdiction of its organization shown in said **Schedule 7.12**, and the percentage ownership by Borrower of each such Subsidiary is as shown in said **Schedule 7.12**.

7.13 Indebtedness and Liens. **Schedule 7.13(b)-1** is a complete and correct list of all Indebtedness of each Obligor outstanding as of the date hereof. **Schedule 7.13(b)-2** is a complete and correct list of all Liens granted by the Borrower and other Obligors with respect to their respective Property and outstanding as of the date hereof.

7.14 Material Agreements. **Schedule 7.14** is a complete and correct list of (i) each Material Agreement existing on the date hereof and (ii) each agreement creating or evidencing any Material Indebtedness. No Obligor is in material default under any such Material Agreement or agreement creating or evidencing any Material Indebtedness. Except as otherwise disclosed on **Schedule 7.14**, all Material Agreements that are material vendor purchase agreements and provider contracts of the Obligors are in full force and effect without material modification from the form in which the same were disclosed to the Lenders.

7.15 Restrictive Agreements. None of the Obligors are subject to any indenture, agreement, instrument or other arrangement of the type described in **Section 9.11**, except for any indenture, agreement, instrument or other arrangement described on **Schedule 7.15** or otherwise permitted under **Section 9.11** (each, a "***Permitted Restrictive Agreement***").

7.16 Real Property.

(a) **Generally**. Neither Borrower nor any of its Subsidiaries owns or leases (as tenant thereof) any real property, except as described on **Schedule 7.16**.

(b) **Borrower Lease**.

(i) Borrower has delivered a true, accurate and complete copy of each Borrower Lease to Lenders.

(ii) Each Borrower Lease is in full force and effect and no material default has occurred under such Borrower Lease and, to the Knowledge of Borrower, there is no existing

condition which, but for the passage of time or the giving of notice, could reasonably be expected to result in a material default under the terms of such Borrower Lease.

(iii) Borrower is the tenant under each Borrower Lease and has not transferred, sold, assigned, conveyed, disposed of, mortgaged, pledged, hypothecated, or encumbered any of its interest in, such Borrower Lease.

7.17 Pension Matters. **Schedule 7.17** sets forth, as of the date hereof, a complete and correct list of, and that separately identifies, (a) all Title IV Plans, (b) all Multiemployer Plans and (c) all material Benefit Plans. Each Benefit Plan, and each trust thereunder, intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Requirements of Law so qualifies. Except for those that could not, in the aggregate, have a Material Adverse Effect, (x) each Benefit Plan is in compliance with applicable provisions of ERISA, the Code and other Requirements of Law, (y) there are no existing or pending (or to the Knowledge of any Obligor or Subsidiary thereof, threatened) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan to which any Obligor or Subsidiary thereof incurs or otherwise has or could have an obligation or any liability or Claim and (z) no ERISA Event is reasonably expected to occur. Borrower and each of its ERISA Affiliates has met all applicable requirements under the ERISA Funding Rules with respect to each Title IV Plan, and no waiver of the minimum funding standards under the ERISA Funding Rules has been applied for or obtained. As of the most recent valuation date for any Title IV Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least 60%, and neither Borrower nor any of its ERISA Affiliates knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage to fall below 60% as of the most recent. As of the date hereof, no ERISA Event has occurred in connection with which obligations and liabilities (contingent or otherwise) remain outstanding. No ERISA Affiliate would have any Withdrawal Liability as a result of a complete withdrawal from any Multiemployer Plan on the date this representation is made.

7.18 Collateral; Security Interest. Each Security Document is effective to create in favor of the Lenders a legal, valid and enforceable security interest in the Collateral subject thereto, which security interests are first-priority, subject to Permitted Liens.

7.19 Regulatory Approvals. Borrower and its Subsidiaries hold, and will continue to hold, either directly or through licensees and agents, all material Regulatory Approvals, licenses, permits and similar governmental authorizations of a Governmental Authority necessary or required for Borrower and its Subsidiaries to conduct their operations and business in the manner currently conducted.

7.20 Small Business Concern. (a) Borrower, together with its "affiliates" (as that term is defined in Title 13 of the United States Code of Federal Regulations) is a "Small Business" within the meaning of the SBIC Act, and the regulations promulgated thereunder (including part 107 and 121 of Title 13 of the United States Code of Federal Regulations).

(b) Borrower's primary business activity does not involve, directly or indirectly, providing funds to others (other than to its Subsidiaries), the purchase or discounting of debt obligations,

factoring or long term leasing of equipment with no provision for maintenance or repair, and Borrower is not classified under Major Group 65 (Real Estate) or Industry No. 1531 (Operative Builders) of the SIC Manual. Borrower acknowledges that it has been advised that PIOP is a Small Business Investment Company and licensee under the SBIC Act.

(c) The information regarding Borrower and its affiliates set forth in the SBA Form 480, Form 652, and Form 1031 is accurate and complete. Borrower acknowledges that the Lenders are relying on the representations and warranties made by Borrower to the SBA in the SBA Form 480 provided to the Lenders.

7.21 Update of Schedules. **Schedules 7.05(b)** (in respect of the lists of Patents, Copyrights and Trademarks under **Section 7.05(b)(i)** only), **7.05(c)**, **7.06**, and **7.16**, may be updated by Borrower prior to each Borrowing Date to insure the continued accuracy of such Schedule as of such Borrowing Date, by Borrower providing to the Lenders, in writing (including via electronic means), a revised version of such Schedule in accordance with the provisions of **Section 12.02**. Each such updated Schedule shall be effective immediately upon the receipt thereof by the Lenders.

SECTION 8
AFFIRMATIVE COVENANTS

Borrower covenants and agrees with the Lenders that, until the Commitments have expired or been terminated and all Obligations have been paid in full indefeasibly in cash:

8.01 Financial Statements and Other Information. The Borrower will furnish to the Lenders:

(a) as soon as available and in any event within 5 days following the date Borrower files Form 10-Q with the SEC, the consolidated and consolidating balance sheets of the Obligors as of the end of such quarter, and the related consolidated and consolidating statements of income, shareholders' equity and cash flows of Borrower and its Subsidiaries for such quarter and the portion of the fiscal year through the end of such quarter, prepared in accordance with GAAP consistently applied, subject to changes resulting from normal, year-end audit adjustments and except for the absence of notes, all in reasonable detail and setting forth in comparative form the figures for the corresponding period in the preceding fiscal year;

(b) as soon as available and in any event within 5 days following the date Borrower files Form 10-K with the SEC, the consolidated and consolidating balance sheets of Borrower and its Subsidiaries as of the end of such fiscal year, and the related consolidated and consolidating statements of income, shareholders' equity and cash flows of Borrower and its Subsidiaries for such fiscal year, prepared in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the previous fiscal year, accompanied by a report and opinion thereon of Ernst & Young LLP or another firm of independent certified public accountants of recognized national standing reasonably acceptable to the Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any qualification or exception as to the scope of such audit;

(c) together with the financial statements required pursuant to **Sections 8.01(a)** and **(b)**, a compliance certificate of a Responsible Officer as of the end of the applicable accounting period (which delivery may, unless a Lender requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes) in the form of **Exhibit E** (a "***Compliance Certificate***") including details of any issues that are material that are raised by auditors;

(d) promptly upon receipt thereof, copies of all letters of representation signed by an Obligor to its auditors and copies of all auditor reports delivered for each fiscal quarter;

(e) as soon as available following the end of each fiscal year, a consolidated condensed financial forecast for Borrower and its Subsidiaries for the following three fiscal years (inclusive of the then current fiscal year), including forecasted consolidated condensed balance sheets, statements of income, and cash flows of Borrower and its Subsidiaries; *provided*, *that* such financial forecasts shall be provided for informational purposes only and Lenders acknowledge that Borrower makes no representations or warranties concerning the accuracy or completeness of such financial forecasts other than that Borrower has prepared such financial forecasts in good faith; and, *provided further*, that such financial forecasts may include material, non-public information and that Lenders must comply with applicable securities laws in connection with the receipt of any such information;

(f) promptly, and in any event within five Business Days after receipt thereof by an Obligor thereof, copies of each notice or other correspondence received from any securities regulator or exchange to the authority of which Borrower may become subject from time to time concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of such Obligor;

(g) the information regarding insurance maintained by Borrower and its Subsidiaries as required under **Section 8.05**;

(h) within 5 days of filing, provide access (via posting and/or links on Borrower's website) to all reports on Form 10-K and Form 10-Q filed with the SEC, any Governmental Authority succeeding to any or all of the functions of the SEC or with any national securities exchange; and within 5 days of filing, provide notice and access (via posting and/or links on Borrower's website) to all reports on Form 8-K filed with the SEC, and copies of (or access to, via posting and/or links on Borrower's website) all other reports, proxy statements and other materials filed by Borrower with the SEC, any Governmental Authority succeeding to any of the functions of the SEC or with any national securities exchange; and

(i) promptly following Lenders' request at any time, proof of Borrower's compliance with **Section 10.03**.

Documents required to be delivered pursuant to **Section 8.01(a)** or **(b)** or referred to in **Section 8.02(h)** (to the extent any such documents are included in materials otherwise filed with the SEC) 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; (ii) on which such documents are posted on the Borrower's behalf on an

Internet or intranet website, if any, to which each Lender has access (whether a commercial, third party website or whether sponsored by the Lenders); or (iii) on which the Borrower provides notice of filing of such documents with the SEC by electronic mail message to the Lenders in accordance with **Section 12.02**.

8.02 Notices of Material Events. The Borrower will furnish to the Lenders written notice of the following promptly after a Responsible Officer first learns of the existence of:

(a) the occurrence of any Default;

(b) notice of the occurrence of any event with respect to its property or assets resulting in a Loss aggregating $500,000 (or the Equivalent Amount in other currencies) or more resulting in a Material Adverse Effect;

(c) (A) any proposed acquisition of stock, assets or property by any Obligor that would reasonably be expected to result in environmental liability under Environmental Laws, and (B)(1) spillage, leakage, discharge, disposal, leaching, migration or release of any Hazardous Material required to be reported to any Governmental Authority under applicable Environmental Laws, and (2) all actions, suits, claims, notices of violation, hearings, investigations or proceedings pending, or to the best of Borrower's Knowledge, threatened against or affecting Borrower or any of its Subsidiaries or with respect to the ownership, use, maintenance and operation of their respective businesses, operations or properties, relating to Environmental Laws or Hazardous Material;

(d) the assertion of any environmental matter by any Person against, or with respect to the activities of, Borrower or any of its Subsidiaries and any alleged violation of or non-compliance with any Environmental Laws or any permits, licenses or authorizations which could reasonably be expected to (either individually or in the aggregate) result in a Material Adverse Effect;

(e) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting Borrower or any of its Affiliates that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect, including, in any event, any filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting Borrower or any of its Affiliates;

(f) (i) on or prior to any filing by any ERISA Affiliate of any notice of intent to terminate any Title IV Plan, a copy of such notice and (ii) promptly, and in any event within ten days, after any Responsible Officer of any ERISA Affiliate knows or has reason to know that a request for a minimum funding waiver under Section 412 of the Code has been filed with respect to any Title IV Plan or Multiemployer Plan, a notice (which may be made by telephone if promptly confirmed in writing) describing such waiver request and any action that any ERISA Affiliate proposes to take with respect thereto, together with a copy of any notice filed with the PBGC or the IRS pertaining thereto;

(g) (i) the termination of any Material Agreement, other than the expiration of such agreement in accordance with its terms; (ii) the entering into of any new Material Agreement by an Obligor; or (iii) any material amendment to a Material Agreement;

(h) the reports and notices as required by the Security Documents;

(i) within 30 days of the date thereof, or, if earlier, on the date of delivery of any financial statements pursuant to Section 8.01, notice of any material change in accounting policies or financial reporting practices by the Obligors (which requirement will be deemed satisfied by the description thereof in a Form 10-K, Form 10-Q or Form 8-K filed with the SEC);

(j) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect;

(k) concurrently with the delivery of financial statements under **Section 8.01(b)**, the creation or other acquisition of any Intellectual Property by Borrower or any Subsidiary after the date hereof and during such prior fiscal year which is registered or becomes registered or the subject of an application for registration with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable, or with any other equivalent foreign Governmental Authority;

(l) any change to the Borrower's and each Subsidiary Guarantor's ownership of Deposit Accounts, Securities Accounts and Commodity Accounts, by delivering to Lenders an updated Annex 7 to the Security Agreement setting forth a complete and correct list of all such accounts as of the date of such change;

(m) any change or development that causes Borrower to cease to be a "Small Business" within the meaning of the SBIC Act, and the regulations promulgated thereunder; or

(n) such other information respecting the operations, properties, business or condition (financial or otherwise) of the Obligors (including with respect to the Collateral) as the Majority Lenders may from time to time reasonably request.

Each notice delivered under this **Section 8.02** shall be accompanied by a statement of a financial officer or other executive officer of Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

8.03 Existence; Conduct of Business. (a) Borrower will, and will cause each of its Subsidiaries to, do or cause to be done all things reasonably necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business; *provided that* the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under **Section 9.03**.

(b) Provided that PIOP is a Lender hereunder as of the Closing Date, (i) without obtaining the prior written approval of PIOP, Borrower will not change within one (1) year after the Closing Date, Borrower's business activity to a business activity to which a licensee under

the SBIC Act is prohibited from providing funds by the SBIC Act, as more specifically set forth under Part 107.720 of Title 13 of the United States Code of Federal Regulations, and (ii) if Borrower's business activity changes to such a prohibited business activity or the proceeds are used for ineligible business activities, Borrower will use all commercially reasonable efforts and cooperate in good faith to assist PIOP to sell or transfer its Proportionate Share of the Loans in a commercially reasonable manner; provided that in no way shall this be considered PIOP's sole remedy if Borrower's business activity changes to such a prohibited business activity.

8.04 Payment of Obligations. Borrower will, and will cause each of its Subsidiaries to, pay and discharge its obligations, including (i) all taxes, fees, assessments and governmental charges or levies imposed upon it or upon its properties or assets prior to the date on which penalties attach thereto, except to the extent such taxes, fees, assessments or governmental charges or levies, or such claims are being contested in good faith by appropriate proceedings and are adequately reserved against in accordance with GAAP; (ii) all lawful claims which, if unpaid, would by law become a Lien upon its property not constituting a Permitted Lien, except to the extent such claims are being contested in good faith by appropriate proceedings and are adequately reserved against in accordance with GAAP; and (iii) all Indebtedness other than Permitted Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

8.05 Insurance. Borrower will, and will cause each of its Subsidiaries to, maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations. Upon the request of the Majority Lenders, Borrower shall furnish the Lenders from time to time with full information as to the insurance carried by it and, if so requested, copies of all such insurance policies. Borrower also shall furnish to the Lenders from time to time upon the request of the Majority Lenders a certificate from the Borrower's insurance broker or other insurance specialist stating that all premiums then due on the policies relating to insurance on the Collateral have been paid and that such policies are in full force and effect. The Borrower shall use commercially reasonable efforts to ensure, or cause others to ensure, that all insurance policies required under this **Section 8.05** shall provide that they shall not be terminated or cancelled nor shall any such policy be materially changed in a manner adverse to the Borrower without at least 30 days' prior written notice to the Borrower and the Lenders. Receipt of notice of termination or cancellation of any such insurance policies or reduction of coverages or amounts thereunder shall entitle the Lenders to renew any such policies, cause the coverages and amounts thereof to be maintained at levels required pursuant to the first sentence of this **Section 8.05** or otherwise to obtain similar insurance in place of such policies, in each case at the expense of the Borrower.

8.06 Books and Records; Inspection Rights. Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries are made of all financial dealings and transactions in relation to its business and activities. Borrower will, and will cause each of its Subsidiaries to, permit any representatives designated by the Lender, upon reasonable prior notice, to visit during normal business hours and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs,

finances and condition with its officers and independent accountants, all at such reasonable times (but not more often than once a year unless an Event of Default has occurred and is continuing).

8.07 Compliance with Laws and Other Obligations. Borrower will, and will cause each of its Subsidiaries to, (i) comply in all material respects with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property (including Environmental Laws) and (ii) comply in all material respects with all terms of Indebtedness and all other Material Agreements, in each case, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

8.08 Maintenance of Properties, Etc.

(a) Borrower shall, and shall cause each of its Subsidiaries to, maintain and preserve all of its properties necessary or useful in the proper conduct of its business in good working order and condition in accordance with the general practice of other Persons of similar character and size, ordinary wear and tear and damage from casualty or condemnation excepted.

(b) Without limiting the generality of clause (a) above, Borrower shall comply with each of the following covenants with respect to each Borrower Lease:

(i) Borrower shall diligently perform and timely observe all of the material terms or those that could result in a termination of the lease, covenants and conditions of each Borrower Lease on the part of Borrower to be performed and observed prior to the expiration of any applicable grace period therein provided and use its reasonable best efforts to preserve and to keep unimpaired and in full force and effect each Borrower Lease.

(ii) Borrower shall promptly notify Lenders of the giving of any written notice by Borrower Landlord to Borrower of any default by Borrower thereunder, and promptly deliver to Lenders a true copy of each such notice. If Borrower shall be in default under any Borrower Lease, Lenders shall have the right (but not the obligation), upon reasonable advance written notice to Borrower, to cause the default or defaults under such Borrower Lease to be remedied and otherwise exercise any and all rights of Borrower under such Borrower Lease, as may be necessary to cure any default and Lenders shall have the right to enter all or any portion of the Property, at such times and in such manner as Lenders reasonably deem necessary, to cure any such default. Without limiting the foregoing, upon any such default, Borrower shall promptly execute, acknowledge and deliver to Lenders such instruments as may reasonably be required of Borrower to permit Lenders to cure any default under such Borrower Lease or permit Lenders to take such other action required to enable Lenders to cure or remedy the matter in default and preserve the security interest of Lenders under the Loan Documents with respect to the Borrower Facility.

(iii) Borrower shall use commercially reasonable efforts to enforce, in a commercially reasonable manner, each material covenant or obligation of the Borrower Landlord in each Borrower Lease in accordance with its terms.

(iv) Borrower, promptly upon learning that Borrower Landlord has failed to perform the material terms and provisions under any Borrower Lease and immediately upon

learning of a rejection or disaffirmance or purported rejection or disaffirmance of the Borrower Lease pursuant to any state or federal bankruptcy law, shall notify Lenders thereof.

(v) Borrower shall promptly, after obtaining knowledge of such filing notify Lenders orally of any filing by or against Borrower Landlord under any Borrower Lease of a petition under the Bankruptcy Code or other applicable law. Borrower shall thereafter promptly give written notice of such filing to Lenders, setting forth any material information available to Borrower as to the date of such filing, the court in which such petition was filed, and the relief sought in such filing. Borrower shall promptly deliver to Lenders any and all notices, summonses, pleadings, applications and other documents received by Borrower in connection with any such petition and any proceedings relating to such petition.

8.09 Licenses. Borrower shall, and shall cause each of its Subsidiaries to, obtain and maintain all licenses, authorizations, consents, filings, exemptions, registrations and other Governmental Approvals necessary in connection with the execution, delivery and performance of the Loan Documents, the consummation of the Transactions or the operation and conduct of its business and ownership of its properties, except where failure to do so could not reasonably be expected to have a Material Adverse Effect.

8.10 Action under Environmental Laws. Borrower shall, and shall cause each of its Subsidiaries to, upon becoming aware of the presence of any Hazardous Materials or the existence of any environmental liability under applicable Environmental Laws with respect to their respective businesses, operations or properties, take all actions, at their cost and expense, as shall be necessary or advisable to investigate and clean up the condition of their respective businesses, operations or properties, including all required removal, containment and remedial actions, and restore their respective businesses, operations or properties to a condition in compliance with applicable Environmental Laws, except to the extent nonaction could not reasonably be expected to have a Material Adverse Effect; and provided, however, that neither Borrower nor any of its Subsidiaries shall be required to undertake any such clean up, removal, containment, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstance in accordance with GAAP.

8.11 Use of Proceeds. The proceeds of the Loans will be used only as provided in **Section 2.05**. No part of the proceeds of the Loans will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board of Governors of the Federal Reserve System, including Regulations T, U and X. Provided that PIOP is a Lender hereunder as of the Closing Date, neither Borrower nor any of its affiliates (as that term is defined in Section 121.103 of Title 13 of the United States Code of Federal Regulation) will engage in any activities or use directly or indirectly the proceeds from the Loans in the amount made by PIOP for any purpose for which an SBIC is prohibited from providing funds by the SBIC Act as set forth in Section 107.720 of Title 13 of the United States Code of Federal Regulation.

8.12 Certain Obligations Respecting Subsidiaries; Further Assurances.

(a) **Subsidiary Guarantors**. Borrower will take such action, and will cause each of its Subsidiaries to take such action, from time to time as shall be necessary to ensure that all Subsidiaries that are Domestic Subsidiaries of Borrower, and such Foreign Subsidiaries as are required under **Section 8.12(b)**, are "Subsidiary Guarantors" hereunder. Without limiting the generality of the foregoing, in the event that Borrower or any of its Subsidiaries shall form or acquire any new Subsidiary that is a Domestic Subsidiary or a Foreign Subsidiary meeting the requirements of **Section 8.12(b)**, Borrower and its Subsidiaries will:

(i) cause such new Subsidiary to become a "Subsidiary Guarantor" hereunder, and a "Grantor" under the Security Agreement, pursuant to a Guarantee Assumption Agreement;

(ii) take such action or cause such Subsidiary to take such action (including delivering such shares of stock together with undated transfer powers executed in blank) as shall be necessary to create and perfect valid and enforceable first priority (subject to Permitted Liens permitted under **Section 9.02(c))** Liens on substantially all of the personal property of such new Subsidiary as collateral security for the obligations of such new Subsidiary hereunder;

(iii) cause the parent of such Subsidiary to execute and deliver a pledge agreement in favor of the Lenders in respect of all outstanding issued shares of such Subsidiary; and

(iv) deliver such proof of corporate action, incumbency of officers, opinions of counsel and other documents as is consistent with those delivered by each Obligor pursuant to **Section 6.01** on the Closing Date or as the Majority Lenders shall have reasonably requested.

(b) **Foreign Subsidiaries**. In the event that, at any time, Foreign Subsidiaries of Borrower have, in the aggregate, (i) total revenues constituting 5% or more of the total revenues of Borrower and its Subsidiaries on a consolidated basis, or (ii) total assets constituting 5% or more of the total assets of Borrower and its Subsidiaries on a consolidated basis, promptly (and, in any event, within 30 days after such time) the Borrower shall cause one or more of such Foreign Subsidiaries to become Subsidiary Guarantors in the manner set forth in **Section 8.12(a)**, such that, after such Subsidiaries become Subsidiary Guarantors, the non-guarantor Foreign Subsidiaries in the aggregate shall cease to have revenues or assets, as applicable, that meet the thresholds set forth in **clauses (i)** and **(ii)** above; *provided that* no Foreign Subsidiary shall be required to become a Subsidiary Guarantor if doing so would result in adverse tax consequences for Borrower and its Subsidiaries, taken as a whole. However, if a Foreign Subsidiary is precluded from becoming a Subsidiary Guarantor as a result of the adverse tax consequences described in the previous sentence, Borrower shall nonetheless pledge 65% of the total number of shares of voting stock of such Foreign Subsidiary to the Lenders to secure the Obligations under this Agreement.

(c) **Further Assurances**. Borrower will, and will cause each of its Subsidiaries to, take such action from time to time as shall reasonably be requested by the Majority Lenders to effectuate the purposes and objectives of this Agreement.

Without limiting the generality of the foregoing, the Borrower will, and will cause each Person

that is required to be a Subsidiary Guarantor to, take such action from time to time (including executing and delivering such assignments, security agreements, control agreements and other instruments) as shall be reasonably requested by the Majority Lenders to create, in favor of the Lenders, perfected security interests and Liens in substantially all of the personal property of such Obligor (subject to Permitted Liens) as collateral security for the Obligations; *provided that* any such security interest or Lien shall be subject to the relevant requirements of the Security Documents.

8.13 Termination of Non-Permitted Liens. In the event that Borrower or any of its Subsidiaries shall become aware or be notified by the Lenders of the existence of any outstanding Lien against any Property of Borrower or any of its Subsidiaries, which Lien is not a Permitted Lien, the Borrower shall use its reasonable best efforts to promptly terminate or cause the termination of such Lien.

8.14 Intellectual Property.

(a) Notwithstanding any provision in this Agreement or any other Loan Documents to the contrary, the Lenders are not assuming any liability or obligation of the Borrower, the Subsidiary Guarantors or their Subsidiaries of whatever nature, whether presently in existence or arising or asserted hereafter, except to the extent required under applicable law in connection with any Intellectual Property license agreement of the Borrower, the Subsidiary Guarantors or their Subsidiaries in the event that the Lenders foreclose on such Collateral. All such liabilities and obligations shall be retained by and remain obligations and liabilities of the Obligors, the Subsidiary Guarantors and/or their Subsidiaries as the case may be, except to the extent required under applicable law in connection with any Intellectual Property license agreement of the Borrower, the Subsidiary Guarantors or their Subsidiaries in the event that the Lenders foreclose on such Collateral. Without limiting the foregoing, the Lenders are not assuming and shall not be responsible for any liabilities or Claims of the Borrower, the Subsidiary Guarantors or their Subsidiaries, whether present or future, absolute or contingent and whether or not relating to the Obligors, the Obligor Intellectual Property, and/or the Material Agreements, and the Borrower shall indemnify and save harmless the Lenders from and against all such liabilities, Claims and Liens, except to the extent required under applicable law in connection with any Intellectual Property license agreement of the Borrower, the Subsidiary Guarantors or their Subsidiaries in the event that the Lenders foreclose on such Collateral. Without limiting the foregoing, this Agreement shall not constitute an agreement to assign any Contracts of, or Obligor Intellectual Property to, the Lenders, except to the extent required under applicable law in connection with any Intellectual Property license agreement of the Borrower, the Subsidiary Guarantors or their Subsidiaries in the event that the Lenders foreclose on such Collateral.

(b) In the event that the Obligors acquire Obligor Intellectual Property during the term of this Agreement, then the provisions of this Agreement shall automatically apply thereto and any such Obligor Intellectual Property shall automatically constitute part of the Collateral hereunder, without further action by any party, in each case from and after the date of such acquisition (except that any representations or warranties of any Obligor shall apply to any such Obligor Intellectual Property only from and after the date, if any, subsequent to such acquisition that such representations and warranties are brought down or made anew as provided herein).

8.15 Post-Closing Items.

(a) Borrower shall use commercially reasonable efforts to execute and deliver to the Lenders such duly executed Intellectual Property security agreements, as the Lenders may require with respect to foreign Intellectual Property, and take such other action as the Lenders may reasonably deem necessary or appropriate to duly record or otherwise perfect the security interest created thereunder in that portion of the Collateral consisting of Intellectual Property located outside the United States in the jurisdictions listed on **Schedule 8.15(a)**.

(b) Borrower shall use commercially reasonable efforts to execute and deliver to the Lenders such duly executed Landlord Consents and Collateral Access Agreements relating to the Borrower Facility.

8.16 Small Business Documentation. (a) Borrower shall, no later than twenty (20) Business Days prior to the Closing Date but may be with the delivery of a Notice of Borrowing, notify the Lenders whether Borrower, together with its "affiliates" (as that term is defined in Title 13 of the United States Code of Federal Regulations), shall be a "Small Business" within the meaning of the SBIC Act, and the regulations promulgated thereunder (including part 107 and 121 of Title 13 of the United States Code of Federal Regulations) on the Closing Date. Upon the receipt of any such notice that Borrower is unable to make any of the representations set forth in **Section 7.20** on the Closing Date, PIOP may in its sole decision withdraw as a Lender hereunder and transfer its Commitments hereunder to any of the other Lenders if PIOP determines that it shall no longer be able to participate as a Lender hereunder in accordance with the SBIC Act, and the regulations promulgated thereunder.

(b) To the extent that PIOP shall be a Lender hereunder as of the Closing Date, Borrower shall accurately complete, execute, and deliver to PIOP prior to the Closing Date, SBA Forms 480, 652, and 1031 (Parts A and B).

SECTION 9
NEGATIVE COVENANTS

Borrower covenants and agrees with the Lenders that, until the Commitments have expired or been terminated and all Obligations have been paid in full indefeasibly in cash:

9.01 Indebtedness. Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, whether directly or indirectly, except:

(a) the Obligations and the Existing Term Loan Obligations;

(b) Indebtedness existing on the date hereof and set forth on **Schedule 7.13(b)-1** and Permitted Refinancings thereof; *provided that*, in each case, such Indebtedness (other than Permitted Priority Debt) is subordinated to the Obligations on terms satisfactory to the Majority Lenders;

(c) Permitted Priority Debt;

(d) [reserved];

(e) accounts payable to trade creditors for goods and services and current operating liabilities (not the result of the borrowing of money) incurred in the ordinary course of Borrower's or its Subsidiary's business in accordance with customary terms and paid within the specified time, unless contested in good faith by appropriate proceedings and reserved for in accordance with GAAP;

(f) Indebtedness consisting of guarantees resulting from endorsement of negotiable instruments for collection by Borrower or any Subsidiary Guarantor in the ordinary course of business;

(g) Indebtedness (i) of Borrower to any Subsidiary Guarantor and (ii) of any Subsidiary Guarantor to Borrower or any other Subsidiary Guarantor;

(h) Guarantees by Borrower of Indebtedness of any Subsidiary Guarantor and by any Subsidiary Guarantor of Indebtedness of Borrower or any other Subsidiary Guarantor if such guaranteed Indebtedness is Permitted Indebtedness of such Subsidiary Guarantor or Borrower;

(i) normal course of business equipment financing; *provided that* (i) if secured, the collateral therefor consists solely of the assets being financed, the products and proceeds thereof and books and records related thereto, and (ii) the aggregate outstanding principal amount of such Indebtedness, when added to the aggregate outstanding principal amount of the Indebtedness permitted in reliance on **Section 9.01(k)**, does not exceed $500,000 (or the Equivalent Amount in other currencies) at any time;

(j) Permitted Subordinated Debt;

(k) Indebtedness of Borrower or any Subsidiary in respect of Capital Lease Obligations, *provided that* the aggregate outstanding principal amount of such Indebtedness, when added to the aggregate outstanding principal amount of the Indebtedness permitted in reliance on **Section 9.01(i)**, does not exceed $500,000 (or the Equivalent Amount in other currencies) at any time;

(l) Indebtedness of any Person acquired in a Permitted Acquisition (so long as such Indebtedness (A) existed prior to the acquisition of such Person by Borrower or any Subsidiary, (B) is not created in connection with such acquisition and (C) is solely the obligation of such Person and not of Borrower or any other Subsidiary), *provided that* the aggregate outstanding principal amount of such Indebtedness, when added to the aggregate outstanding principal amount of the Indebtedness permitted in reliance on **Section 9.01(m)**, does not exceed $5,000,000 (or the Equivalent Amount in other currencies) in the aggregate;

(m) Indebtedness consisting of contingent liabilities in respect of indemnification obligations or adjustment of purchase price in connection with the consummation of Permitted Acquisitions, *provided that* the aggregate outstanding principal amount of such Indebtedness, when added to the aggregate outstanding principal amount of the Indebtedness permitted in reliance on **Section 9.01(l)**, does not exceed $5,000,000 (or the Equivalent Amount in other currencies) in the aggregate;

(n) Indebtedness incurred in a transaction specifically permitted under **Section 9.10(d)**;

(o) other Indebtedness not to exceed $250,000 in aggregate at any one time outstanding; and

(p) Indebtedness approved in advance in writing by the Majority Lenders.

9.02 Liens. Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Lien on any property or asset now owned by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except (collectively, "***Permitted Liens***"):

(a) Liens securing the Obligations and the Existing Term Loan Obligations;

(b) any Lien on any property or asset of Borrower or any of its Subsidiaries existing on the date hereof and set forth in **Schedule 7.13(b)-2**; *provided that* (i) no such Lien shall extend to any other property or asset of Borrower or any of its Subsidiaries and (ii) any such Lien shall secure only those obligations which it secures on the date hereof and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(c) Liens described in the definition of "Permitted Priority Debt";

(d) Liens securing Indebtedness permitted under **Section 9.01(i)** or **(k)**; *provided that* such Liens are restricted solely to the collateral described in **Section 9.01(i)** or **(k)**;

(e) Liens imposed by law which were incurred in the ordinary course of business, including (but not limited to) carriers', warehousemen's and mechanics' liens and other similar liens arising in the ordinary course of business and which (x) do not in the aggregate materially detract from the value of the Property subject thereto or materially impair the use thereof in the operations of the business of such Person or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the Property subject to such liens and for which adequate reserves have been made if required in accordance with GAAP;

(f) pledges or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance or other similar social security legislation;

(g) Liens securing taxes, assessments and other governmental charges, the payment of which is not yet due or is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserve or other appropriate provisions, if any, as shall be required by GAAP shall have been made;

(h) servitudes, easements, rights of way, restrictions and other similar encumbrances on real Property imposed by applicable Laws and encumbrances consisting of zoning or building restrictions, easements, licenses, restrictions on the use of property or minor imperfections in title thereto which, in the aggregate, are not material, and which do not in any case materially detract

from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Obligors;

(i) with respect to any real Property, (A) such defects or encroachments as might be revealed by an up-to-date survey of such real Property; (B) the reservations, limitations, provisos and conditions expressed in the original grant, deed or patent of such property by the original owner of such real Property pursuant to applicable Laws; and (C) rights of expropriation, access or user or any similar right conferred or reserved by or in applicable Laws, which, in the aggregate for (A), (B) and (C), are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Obligors;

(j) Liens on Patents, Trademarks, Copyrights or other Intellectual Property rights to the extent (i) such Liens arise from non-exclusive licenses or sublicenses thereof entered into the ordinary course of business of Borrower or any of its Subsidiaries and (ii) such non-exclusive licenses or sublicenses do not, in the aggregate, materially interfere with the ordinary conduct of business of Borrower and its Subsidiaries;

(k) Bankers' liens, rights of setoff and similar Liens incurred on deposits made in the ordinary course of business; and

(l) Liens incurred or deposits made to secure the performance of tenders, bids, leases, statutory or regulatory obligations, surety and appeal bond or government contracts in the ordinary course of business and not for borrowed money;

provided that no Lien otherwise permitted under any of the foregoing **Sections 9.02(b)** (unless such Lien is of the type described under **Section 9.02(j)), (c), (d), (e), (f), (h) and (i)** shall apply to any Material Intellectual Property.

9.03 Fundamental Changes and Acquisitions. Borrower will not, and will not permit any of its Subsidiaries to, (i) enter into any transaction of merger, amalgamation or consolidation (ii) liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution) (iii) make any Acquisition or otherwise acquire any business or substantially all the property from, or capital stock of, or be a party to any acquisition of, any Person. Notwithstanding the foregoing provisions of this **Section 9.03**:

(a) Borrower and its Subsidiaries may make Investments permitted under **Section 9.05**;

(b) Borrower may be merged, amalgamated or consolidated with or into another Person provided that Borrower gives the Lenders advance notice prior to entering into any agreement in connection with such transaction of merger, amalgamation or consolidation and otherwise complies with **Section 3.03(b)(ii)**;

(c) any Subsidiary Guarantor may be merged, amalgamated or consolidated with or into Borrower or any other Subsidiary Guarantor;

(d) any Subsidiary Guarantor may sell, lease, transfer or otherwise dispose of any or all of its property (upon voluntary liquidation or otherwise) to Borrower or another Subsidiary Guarantor; and

(e) the capital stock of any Subsidiary Guarantor may be sold, transferred or otherwise disposed of to Borrower or another Subsidiary Guarantor; and

(f) Borrower and its Subsidiaries may make Permitted Acquisitions, not to exceed $10,000,000 in the aggregate.

9.04 Lines of Business. Borrower will not, and will not permit any of its Subsidiaries to, engage to any material extent in any business other than the business engaged in on the date hereof by Borrower or any Subsidiary or a business reasonably related thereto.

9.05 Investments. Borrower will not, and will not permit any of its Subsidiaries to, make, directly or indirectly, or permit to remain outstanding any Investments except:

(a) Investments outstanding on the date hereof and identified in **Schedule 9.05**;

(b) operating deposit accounts with banks;

(c) extensions of credit in the nature of accounts receivable or notes receivable arising from the sales of goods or services in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(d) Permitted Cash Equivalent Investments;

(e) Investments by Borrower and the Subsidiary Guarantors in Borrower's wholly-owned Subsidiary Guarantors (for greater certainty, Borrower shall not be permitted to have any direct or indirect Subsidiaries that are not wholly-owned Subsidiaries);

(f) Hedging Agreements entered into in the ordinary course of Borrower's financial planning solely to hedge currency risks (and not for speculative purposes) and in an aggregate notional amount for all such Hedging Agreements not in excess of $1,500,000 (or the Equivalent Amount in other currencies);

(g) Investments consisting of security deposits with utilities and other like Persons made in the ordinary course of business;

(h) Investments consisting of employee loans, travel advances and guarantees in accordance with Borrower's usual and customary practices with respect thereto (if permitted by applicable law) which in the aggregate shall not exceed $500,000 outstanding at any time (or the Equivalent Amount in other currencies);

(i) Investments received in connection with any Insolvency Proceedings in respect of any customers, suppliers or clients and in settlement of delinquent obligations of, and other disputes with, customers, suppliers or clients;

(j) Permitted Acquisitions;

(k) Investments permitted pursuant to **Section 9.03**;

(l) Indebtedness permitted by **Section 9.01**; and

(m) other Investments not exceeding $100,000 individually or $500,000 in the aggregate.

9.06 Restricted Payments. Borrower will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except:

(a) Borrower and each Subsidiary may declare and pay dividends with respect to its capital stock payable solely in additional shares of its common stock;

(b) Borrower and each Subsidiary may purchase, redeem, retire, or otherwise acquire shares of its capital stock or other equity interests with the proceeds received from a substantially concurrent issue of new shares of its capital stock or other equity interests;

(c) for the payment of dividends by any Subsidiary Guarantor to Borrower or to any other Subsidiary Guarantor; and

(d) Borrower may make the following Restricted Payments, not to exceed $500,000 in the aggregate in any fiscal year:

(i) Borrower may purchase, redeem, retire, or otherwise acquire shares of its capital stock or other equity interests from former employees or consultants pursuant to stock repurchase agreements or agreements that have a similar purpose or function so long as an Event of Default does not exist at the time of such repurchase and would not exist after giving effect to such repurchase;

(ii) Borrower may purchase shares of capital stock in connection with the exercise of stock options by way of cashless exercise or in connection with the satisfaction of withholding obligations; and

(iii) Borrower may purchase fractional shares of capital stock arising out of stock dividends, forward or reverse stock splits, combinations or business combinations.

9.07 Payments of Indebtedness. Borrower will not, and will not permit any of its Subsidiaries to, make any payments in respect of any Indebtedness other than (i) the Obligations and (ii) subject to any applicable terms of subordination, other Permitted Indebtedness.

9.08 Change in Fiscal Year. The Borrower will not, and will not permit any of its Subsidiaries to, change the last day of its fiscal year from that in effect on the date hereof, except to change the fiscal year of a Subsidiary acquired in connection with an Acquisition to conform its fiscal year to the Borrower's.

9.09 Sales of Assets, Etc. Unless the Borrower simultaneously makes the prepayment required under **Section 3.03(b)(i)**, the Borrower will not, and will not permit any of its Subsidiaries to, sell, lease, exclusively license (in terms of geography or field of use), transfer, or otherwise dispose of any of its Property (including accounts receivable and capital stock of Subsidiaries) to any Person in one transaction or series of transactions (any thereof, an "***Asset Sale***"), except for any of the following:

(a) transfers of cash in the ordinary course of its business for equivalent value;

(b) dispositions of Permitted Cash Equivalent Investments for equivalent value;

(c) sales of inventory in the ordinary course of its business on ordinary business terms including to distributors;

(d) dispositions of accounts receivable for purposes of collection in the ordinary course of business;

(e) disposition of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such disposition are reasonably promptly applied to the purchase price of such replacement property;

(f) development and other collaborative arrangements where such arrangements provide for the licenses or disclosure of Patents, Trademarks, Copyrights or other Intellectual Property rights in the ordinary course of business and consistent with general market practices where such license requires periodic payments based on per unit sales of a product over a period of time and provided that such licenses must be true licenses as opposed to licenses that are sales transactions in substance;

(g) transfers of Property by any Obligor to any other Obligor;

(h) dispositions of any Property that is obsolete or worn out or no longer used or useful in the Business;

(i) those transactions permitted by **Sections 9.02**, **9.03** or **9.05**; and

(j) so long as no Default or Event of Default has occurred and is continuing, or would result therefrom, dispositions of assets not otherwise permitted in clauses (a) through (i) hereof so long as such dispositions are made at fair market value and the aggregate amount of all such dispositions would not exceed $1,000,000 during any fiscal year, or exceed $2,000,000 in the aggregate during the term of this Agreement.

Lenders acknowledge and agree that clause (e) above includes the right for Borrower to make decisions in the ordinary course of business regarding the registration of any of its Intellectual Property, including without limitation, any decisions regarding application, prosecution, abandonment, or cancellation of any such Intellectual Property, without the consent of any Lender.

9.10 Transactions with Affiliates. Borrower will not, and will not permit any of its Subsidiaries to, sell, lease, license or otherwise transfer any assets to, or purchase, lease, license or otherwise acquire any assets from, or otherwise engage in any other transactions with, any of its Affiliates, except for any of the following:

(a) transactions between or among Obligors;

(b) any Indebtedness permitted by **Section 9.01**;

(c) any Investment permitted by **Section 9.05**;

(d) any Restricted Payment permitted by **Section 9.06**;

(e) any Asset Sale permitted by **Section 9.09**;

(f) customary compensation and indemnification of, and other employment arrangements with, directors, officers and employees of Borrower or any Subsidiary in the ordinary course of business,

(g) Borrower may issue debt or Equity Interests to Affiliates in exchange for cash, *provided that* the terms thereof are no less favorable (including the amount of cash received by Borrower) to Borrower than those that would be obtained in a comparable arm's-length transaction with a Person not an Affiliate of Borrower; and

(h) the transactions set forth on **Schedule 9.10**.

9.11 Restrictive Agreements. Except for Permitted Restrictive Agreements, Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to Borrower or any other Subsidiary or to Guarantee Indebtedness of Borrower or any other Subsidiary; *provided that*:

(i) the foregoing shall not apply to (x) restrictions and conditions imposed by law or by this Agreement and (y) customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder; and

(ii) the foregoing **clause (a)** shall not apply to (x) restrictions or conditions imposed by any agreement relating to secured Permitted Indebtedness if such restrictions or conditions apply only to the property or assets securing such Indebtedness and (y) customary provisions in leases, in-bound licenses of Intellectual Property and other contracts restricting the assignment thereof;

(iii) the foregoing shall not apply to any stockholder agreement, charter, by laws or other organizational documents of Borrower or any Subsidiary as in effect on the date hereof and as amended as permitted hereunder; and

(iv) the foregoing shall not apply to Permitted Liens.

9.12 Amendments to Material Agreements. Borrower will not, and will not permit any of its Subsidiaries to, enter into any material amendment to or material modification of any Material Agreement or terminate any Material Agreement (unless replaced with another agreement that, viewed as a whole, is on better terms for Borrower or such Subsidiary) without in each case the prior written consent of the Lender (which consent shall not be unreasonably withheld or delayed).

9.13 Preservation of Borrower Lease; Operating Leases.

(a) Notwithstanding any provision of this Agreement to the contrary, Borrower shall not:

(i) Surrender, terminate, forfeit, or suffer or permit the surrender, termination or forfeiture of, or agree to a material change, modification, or amendment to, any Borrower Lease that is materially adverse to the Lenders, nor transfer, sell, assign, convey, dispose of, mortgage, pledge, hypothecate, assign or encumber any of its interest in, any Borrower Lease;

(ii) Waive, excuse, condone or in any way release or discharge Borrower Landlord of or from its material obligations, covenants and/or conditions under any Borrower Lease to the extent such waiver, excuse, condonement, release or discharge is materially adverse to the Lenders; or

(iii) Elect to treat any Borrower Lease as terminated or rejected under subsection 365 of the Bankruptcy Code or other applicable Law. Any such election made without Majority Lenders' prior written consent shall be void. If, pursuant to subsection 365 of the Bankruptcy Code or other applicable law, Borrower seeks to offset, against the rent reserved in any Borrower Lease, the amount of any damages caused by the nonperformance by Borrower Landlord of any of its obligations thereunder after the rejection by Borrower Landlord of such Borrower Lease under the Bankruptcy Code or other applicable Law, then Borrower shall not effect any offset of any amounts objected to by Lenders.

(b) Borrower will not, and will not permit any of its Subsidiaries to, make any expenditures in respect of operating leases, except for:

(i) real estate operating leases;

(ii) operating leases between Borrower and any of its wholly-owned Subsidiaries or between any of Borrower's wholly-owned Subsidiaries; and

(c) operating leases that would not cause Borrower and its Subsidiaries, on a consolidated basis, to make payments exceeding $1,000,000 (or the Equivalent Amount in other currencies) in any fiscal year.

9.14 Sales and Leasebacks. Except as disclosed on **Schedule 9.14**, Borrower will not, and will not permit any of its Subsidiaries to, become liable, directly or indirectly, with respect to any lease, whether an operating lease or a Capital Lease Obligation, of any property (whether real, personal, or mixed), whether now owned or hereafter acquired, (i) which Borrower or such Subsidiary has sold or transferred or is to sell or transfer to any other Person and (ii) which Borrower or such Subsidiary intends to use for substantially the same purposes as property which has been or is to be sold or transferred.

9.15 Hazardous Material. Borrower will not, and will not permit any of its Subsidiaries to, use, generate, manufacture, install, treat, release, store or dispose of any Hazardous Material, except in compliance with all applicable Environmental Laws or where the failure to comply could not reasonably be expected to result in a Material Adverse Change.

9.16 Accounting Changes. Borrower will not, and will not permit any of its Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required or permitted by GAAP.

9.17 Compliance with ERISA. No ERISA Affiliate shall cause or suffer to exist (a) any event that could result in the imposition of a Lien with respect to any Title IV Plan or Multiemployer Plan or (b) any other ERISA Event that would, in the aggregate, have a Material Adverse Effect. No Obligor or Subsidiary thereof shall cause or suffer to exist any event that could result in the imposition of a Lien with respect to any Benefit Plan.

SECTION 10
FINANCIAL COVENANTS

10.01 Minimum Revenue.

(a) Borrower and its Subsidiaries shall have Revenue:

(i) during the twelve month period beginning on January 1, 2014, of at least $30,000,000;

(ii) during the twelve month period beginning on January 1, 2015, of at least $50,000,000;

(iii) during the twelve month period beginning on January 1, 2016, of at least $65,000,000;

(iv) during the twelve month period beginning on January 1, 2017, of at least $80,000,000;

(v) during the twelve month period beginning on January 1, 2018, of at least $95,000,000; and

(vi) during each twelve month period following thereafter, of at least $95,000,000.

10.02 Cure Right.

(a) Notwithstanding anything to the contrary contained in **Section 11**, in the event that the Borrower fails to comply with the covenants contained in **Section 10.01(a)(i)-(v) or Section 10.03** (such covenants for such applicable periods being the "***Specified Financial Covenants***"), Borrower shall have the right at any time in the twelve (12) months prior to, or within 90 (ninety) days of, the end of the respective calendar year:

(i) to issue additional shares of Equity Interests in exchange for cash (the "***Equity Cure Right***"), or

(ii) to borrow Permitted Subordinated Debt (the "***Subordinated Debt Cure Right***" and, collectively with the Equity Cure Right, the "***Cure Right***"),

and upon the receipt by Borrower of the Cure Amount pursuant to the exercise of such Cure Right, such Cure Amount shall be deemed to constitute Revenue or cash, as applicable, of Borrower for purposes of the Specified Financial Covenants and the Specified Financial Covenants shall be recalculated. If, after giving effect to the foregoing recalculation, Borrower shall then be in compliance with the requirements of the Specified Financial Covenants, Borrower shall be deemed to have satisfied the requirements of the Specified Financial Covenants as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach of the Specified Financial Covenants that had occurred shall be deemed cured without any further action of Borrower or Lenders for all purposes under the Loan Documents.

(b) Notwithstanding anything herein to the contrary, (i) the Cure Right may be exercised no more than twice, (ii) the amount of the payment received by Borrower from investors investing in Borrower pursuant to **Section 10.02(a)** (the "***Cure Amount***") shall be equal to twice the shortfall amount required to cause the Borrower to be in compliance with the Specified Financial Covenants, (iii) Borrower shall deliver a compliance certificate, evidencing compliance with the Specified Financial Covenants after giving effect to receipt of the Cure Amount, and (iv) upon receipt by Borrower of the Cure Amount, Borrower shall immediately prepay the Loans, without any Prepayment Premium, in an amount equal to the Cure Amount, credited in the order set forth on **Section 3.03(b)(i)(A)-(E)**.

10.03 Minimum Cash

Borrower and Subsidiaries shall maintain at all times Liquidity in an amount which shall exceed the greater of (i) $2,000,000 and (ii) to the extent Borrower has incurred Permitted Priority Debt, the minimum cash balance, if any, required of Borrower by Borrower's Permitted Priority Debt creditors.

SECTION 11
EVENTS OF DEFAULT

11.01 Events of Default. Each of the following events shall constitute an "***Event of Default***":

(a) Borrower shall fail to pay any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) any Obligor shall fail to pay any Obligation (other than an amount referred to in **Section 11.01(a))** when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days;

(c) any representation or warranty made or deemed made by or on behalf of Borrower or any of its Subsidiaries in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, shall: (i) prove to have been incorrect when made or deemed made to the extent that such representation or warranty contains any materiality or Material Adverse Effect qualifier; or (ii) prove to have been incorrect in any material respect when made or deemed made to the extent that such representation or warranty does not otherwise contain any materiality or Material Adverse Effect qualifier;

(d) any Obligor shall fail to observe or perform any covenant, condition or agreement contained in **Section 8.02**, **8.03** (with respect to the Borrower's existence), **8.11**, **8.12**, **8.14**, **9** or **10**;

(e) except as otherwise set forth in **Section 10.02**, any Obligor shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in **Section 11.01(a)**, **(b)** or **(d)**) or any other Loan Document and such failure shall continue unremedied for a period of 20 or more days after written notice thereof from the Lenders is received by a Responsible Officer of Borrower;

(f) Borrower or any of its Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable after giving effect to any applicable grace or cure period as originally provided by the terms of such Indebtedness;

(g) (i) any material breach of, or "event of default" or similar event by any Obligor under, any Material Agreement, (ii) any material breach of, or "event of default" or similar event under, the documentation governing the Existing Term Loan Obligations or any other Material Indebtedness shall occur, or (iii) any event or condition occurs (A) that results in the Existing Term Loan Obligations or any other Material Indebtedness becoming due prior to its scheduled maturity or (B) that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of the Existing Term Loan Obligations or any other such Material Indebtedness or any trustee or agent on its or their behalf to cause the Existing Term Loan Obligations or any other such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; *provided that* this **Section 11.01(g)** shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing the Existing Term Loan Obligations or any other such Material Indebtedness.

(h) any Obligor:

(i) becomes insolvent, or generally does not or becomes unable to pay its debts or meet its liabilities as the same become due, or admits in writing its inability to pay its debts generally, or declares any general moratorium on its indebtedness, or proposes a compromise or arrangement or deed of company arrangement between it and any class of its creditors;

(ii) commits an act of bankruptcy or makes an assignment of its property for the general benefit of its creditors or makes a proposal (or files a notice of its intention to do so);

(iii) institutes any proceeding seeking to adjudicate it an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief, under any federal, provincial or foreign Law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity, or files an answer admitting the material allegations of a petition filed against it in any such proceeding;

(iv) applies for the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property; or

(v) takes any action, corporate or otherwise, to approve, effect, consent to or authorize any of the actions described in this **Section 11.01(h)** or in **Section 11.01(i)**, or otherwise acts in furtherance thereof or fails to act in a timely and appropriate manner in defense thereof;

(i) any petition is filed, application made or other proceeding instituted against or in respect of Borrower or any Subsidiary:

(i) seeking to adjudicate it an insolvent;

(ii) seeking a receiving order against it;

(iii) seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), deed of company arrangement or composition of it or its debts or any other relief under any federal, provincial or foreign law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity; or

(iv) seeking the entry of an order for relief or the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or

other similar official for it or any substantial part of its property, and such petition, application or proceeding continues undismissed, or unstayed and in effect, for a period of thirty (30) days after the institution thereof; *provided that* if an order, decree or judgment is granted or entered (whether or not entered or subject to appeal) against Borrower or such Subsidiary thereunder in the interim, such grace period will cease to apply; *provided further that* if Borrower or such Subsidiary files an answer admitting the material allegations of a petition filed against it in any such proceeding, such grace period will cease to apply;

(j) any other event occurs which, under the laws of any applicable jurisdiction, has an effect equivalent to any of the events referred to in either of **Section 11.01(h)** or **(i)**;

(k) one or more judgments for the payment of money shall be rendered against any Obligor or any combination thereof in an aggregate amount in excess of (i) $500,000 (or the Equivalent Amount in other currencies) and the same shall remain undischarged for a period of 45 consecutive days, or (ii) $5,000,000 (or the Equivalent Amount in other currencies) and the same shall remain undischarged for a period of 60 consecutive days, in either case, during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Obligor to enforce any such judgment;

(l) a Material Adverse Change shall have occurred;

(m) (i) the Liens created by the Security Documents shall at any time not constitute a valid and perfected Lien on the collateral intended to be covered thereby (to the extent perfection by filing, registration, recordation or possession is required herein or therein) in favor of the Lenders, free and clear of all other Liens (other than Permitted Liens), (ii) except for expiration in accordance with its terms, any of the Security Documents or any Guarantee of any of the Obligations (including that contained in **Section 13**) shall for whatever reason be terminated or cease to be in full force and effect, (ii) the enforceability of any of the Security Documents or any Guarantee of any of the Obligations (including that contained in **Section 13**) shall be contested by any Obligor;

(n) any injunction, whether temporary or permanent, shall be rendered against any Obligor that prevents the Obligors from selling or manufacturing the Product or its commercially available successors, or any of their other material and commercially available products in the United States or Europe for more than 45 consecutive calendar days.

11.02 Remedies. Upon the occurrence of any Event of Default, then, and in every such event (other than an Event of Default described in **Section 11.01(h)**, **(i)** or **(j)**), and at any time thereafter during the continuance of such event, Majority Lenders may, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations, shall become due and payable immediately (in the case of the Loans, at the Redemption Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor; and

in case of any an Event of Default described in **Section 11.01(h)**, **(i)** or **(j)**, the Commitment shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other Obligations, shall automatically become due and payable immediately (in the case of the Loans, at the Redemption Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor.

SECTION 12
MISCELLANEOUS

12.01 No Waiver. No failure on the part of the Lenders to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any Loan Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

12.02 Notices. All notices, requests, instructions, directions and other communications provided for herein (including any modifications of, or waivers, requests or consents under, this Agreement) shall be given or made in writing (including by telecopy) delivered, if to Borrower, another Obligor or the Lenders, to its address specified on the signature pages hereto or its Guarantee Assumption Agreement, as the case may be, or at such other address as shall be designated by such party in a notice to the other parties. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given upon receipt of a legible copy thereof, in each case given or addressed as aforesaid. All such communications provided for herein by telecopy shall be confirmed in writing promptly after the delivery of such communication (it being understood that non-receipt of written confirmation of such communication shall not invalidate such communication). Notices, documents, certificates and other deliverables to the Lenders by any Obligor may be made solely to the Control Agent and the Control Agent shall promptly deliver such notices, documents, certificates and other deliverables to the other Lenders hereunder.

12.03 Expenses, Indemnification, Etc.

(a) **Expenses**. Borrower agrees to pay or reimburse (i) the Lenders for all of their reasonable out of pocket costs and expenses (including the reasonable out-of-pocket fees and expenses of Morrison & Foerster LLP, special counsel to the Lenders, and any sales, goods and services or other similar taxes applicable thereto, and printing, reproduction, document delivery, communication and travel costs) in connection with (x) the negotiation, preparation, execution and delivery of this Agreement, the amendment and restatement of the Existing Term Loan Agreement, and the other Loan Documents and the making of the Loans (exclusive of post-closing costs), (y) post-closing costs and (z) the negotiation or preparation of any modification, supplement or waiver of any of the terms of this Agreement or any of the other Loan Documents (whether or not consummated) and (ii) the Lenders for all of their out of pocket costs and expenses (including the fees and expenses of legal counsel) in connection with any enforcement or collection proceedings resulting from the occurrence of an Event of Default; *provided, however, that* the Borrower shall not be required to pay or reimburse any amounts pursuant to **Section 12.03(a)(i)(x)** in excess of the Expense Cap (inclusive of all out of pocket costs and

expenses in connection with the negotiation, preparation, execution and delivery of the amendment and restatement of the Existing Term Loan Agreement and the making of the loans thereunder); *provided further that*, so long as the Loans are consummated on the Closing Date, then such fees shall be credited from the fees paid by the Borrower pursuant to **Section 2.03**. Notwithstanding any other provision herein, the Borrower will not be required to pay or reimburse the Lenders for any expenses that the Lenders may incur in connection with any amendment to this Agreement made solely because the Borrower has ceased to qualify as a "Small Business" within the meaning of the SBIC Act, and the regulations promulgated thereunder (including part 107 and 121 of Title 13 of the United States Code of Federal Regulations), including any expenses associated with the transfer of PIOP's commitment to a new Lender.

(b) **Indemnification**. Borrower hereby indemnifies the Lenders, their Affiliates, and their respective directors, officers, employees, attorneys, agents, advisors and controlling parties (each, an "***Indemnified Party***") from and against, and agrees to hold them harmless against, any and all Claims or Losses of any kind (including reasonable fees and disbursements of counsel), joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to any investigation, litigation or proceeding or the preparation of any defense with respect thereto arising out of or in connection with or relating to this Agreement or any of the other Loan Documents or the transactions contemplated hereby or thereby or any use made or proposed to be made with the proceeds of the Loans, whether or not such investigation, litigation or proceeding is brought by Borrower, any of its shareholders or creditors, an Indemnified Party or any other Person, or an Indemnified Party is otherwise a party thereto, and whether or not any of the conditions precedent set forth in **Section 6** are satisfied or the other transactions contemplated by this Agreement are consummated, except to the extent such Claim or Loss is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct. No Obligor shall assert any claim against any Indemnified Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the transactions contemplated hereby or thereby or the actual or proposed use of the proceeds of the Loans. Borrower, its Subsidiaries and Affiliates and their respective directors, officers, employees, attorneys, agents, advisors and controlling parties are each sometimes referred to in this Agreement as a "***Borrower Party***." No Lender shall assert any claim against any Borrower Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the transactions contemplated hereby or thereby or the actual or proposed use of the proceeds of the Loans.

12.04 Amendments, Etc. Except as otherwise expressly provided in this Agreement, any provision of this Agreement may be modified or supplemented only by an instrument in writing signed by the Borrower and the Lenders. Any consent, approval, (including without limitation any approval of or authorization for any amendment to any of the Loan Documents), instruction or other expression of the Lenders under any of the Loan Documents may be obtained by an instrument in writing signed in one or more counterparts by Majority Lenders; provided however, that the consent of all of the Lenders shall be required to:

(i) amend, modify, discharge, terminate or waive any of the terms of this Agreement if such amendment, modification, discharge, termination or waiver would increase the amount of the Loans, reduce the fees payable hereunder, reduce interest rates or other amounts payable with respect to the Loans, extend any date fixed for payment of principal, interest or other amounts payable relating to the Loans or extend the repayment dates of the Loans;

(ii) amend the provisions of **Section 6**;

(iii) amend, modify, discharge, terminate or waive any Security Document if the effect is to release a material part of the Collateral subject thereto otherwise than pursuant to the terms hereof or thereof; or

(iv) amend this **Section 12.04**.

Notwithstanding anything to the contrary herein, a Defaulting Lender shall not have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

12.05 Successors and Assigns.

(a) **General**. 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 Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lenders. Any of the Lenders may assign or otherwise transfer any of their rights or obligations hereunder to an assignee in accordance with the provisions of **Section 12.05(b)**, (ii) by way of participation in accordance with the provisions of **Section 12.05(e)** subject to the limitations of **Section 12.05(f)** or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 12.05(g)**. 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 **Section 12.05(e)** and, to the extent expressly contemplated hereby, the Indemnified Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lenders**. Any of the Lenders may at any time assign to one or more Eligible Transferees all or a portion of their rights and obligations under this Agreement (including all or a portion of the Commitment and the Loans at the time owing to it); *provided, however, that* no such assignment shall be made to Borrower, an Affiliate of Borrower, or any employees or directors of Borrower at any time. Subject to the recording thereof by the Lenders pursuant to **Sections 12.05(c)** and **12.05(d)**, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and

obligations of the Lenders under this Agreement, and correspondingly the assigning Lender shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of a 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 **Section 5** and **Section 12.03**. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this **Section 12.05(b)** 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 **Section 12.05(e)**.

(c) **Amendments to Loan Documents**. Each of the Lenders and the Obligors agrees to enter into such amendments to the Loan Documents, and such additional Security Documents and other instruments and agreements, in each case in form and substance reasonably acceptable to the Lenders and the Obligors, as shall reasonably be necessary to implement and give effect to any assignment made under this **Section 12.05**.

(d) **Register**. The Lenders, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices, which shall be the office of the Control Agent, a register for the recordation of the name and address of any assignee of the Lenders and the Commitment and outstanding principal amount of the Loans owing thereto (the "***Register***"). The entries in the Register shall be conclusive, absent manifest error, and Borrower may treat each Person whose name is recorded in the Register pursuant to the terms hereof as the "Lender" hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrower, at any reasonable time and from time to time upon reasonable prior notice.

(e) **Participations**. Any of the Lenders may at any time, without the consent of, or notice to, Borrower, sell participations to any Person (other than a natural person or Borrower or any of the Borrower's Affiliates or Subsidiaries) (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 the 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 shall continue to deal solely and directly with the Lenders in connection therewith.

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 that would (i) increase or extend the term of such Lender's Commitment, (ii) extend the date fixed for the payment of principal of or interest on the Loans or any portion of any fee hereunder payable to the Participant, (iii) reduce the amount of any such payment of principal, or (iv) reduce the rate at which interest is payable thereon to a level below the rate at which the Participant is entitled to receive such interest. Subject to **Section 12.05(f)**, Borrower agrees that each Participant shall be entitled to the benefits of **Section 5** to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 12.05(b)**. To the extent permitted by law, each Participant also shall be

entitled to the benefits of **Section 4.04(a)** as though it were the Lender.

(f) **Limitations on Rights of Participants**. A Participant shall not be entitled to receive any greater payment under **Section 5.01** or **5.05** than a Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent.

(g) **Certain Pledges**. The Lenders may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement and any other Loan Document to secure obligations of the Lenders, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided that* no such pledge or assignment shall release the Lenders from any of their obligations hereunder or substitute any such pledgee or assignee for the Lenders as a party hereto.

12.06 Survival. The obligations of Borrower under **Sections 5.01**, **5.03**, **5.05**, **12.03**, **12.05**, **12.09**, **12.10**, **12.11**, **12.12**, **12.13**, **12.14** and **Section 13** (solely to the extent guaranteeing any of the obligations under the foregoing Sections) shall survive the repayment of the Loans and the termination of the Commitment and, in the case of the Lenders' assignment of any interest in the Commitment or the Loans hereunder, shall survive, in the case of any event or circumstance that occurred prior to the effective date of such assignment, the making of such assignment, notwithstanding that the Lenders may cease to be "Lenders" hereunder. In addition, each representation and warranty made, or deemed to be made by a notice of the Loans, herein or pursuant hereto shall survive the making of such representation and warranty.

12.07 Captions. The table of contents and captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

12.08 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

12.09 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws that would result in the application of the laws of any other jurisdiction; provided that Section 5-1401 of the New York General Obligations Law shall apply.

12.10 Jurisdiction, Service of Process and Venue.

(a) **Submission to Jurisdiction**. Each Obligor agrees that any suit, action or proceeding with respect to this Agreement or any other Loan Document to which it is a party or any judgment entered by any court in respect thereof may be brought initially in the federal or state courts in Houston, Texas or in the courts of its own corporate domicile and irrevocably submits to the non-exclusive jurisdiction of each such court for the purpose of any such suit, action, proceeding or judgment. This **Section 12.10(a)** is for the benefit of the Lenders only and, as a result, no Lender shall be prevented from taking proceedings in any other courts with

jurisdiction. To the extent allowed by applicable Laws, the Lenders may take concurrent proceedings in any number of jurisdictions.

(b) **Alternative Process**. Nothing herein shall in any way be deemed to limit the ability of the Lenders to serve any such process or summonses in any other manner permitted by applicable law.

(c) **Waiver of Venue, Etc**. Each Obligor irrevocably waives to the fullest extent permitted by law any objection that it may now or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document and hereby further irrevocably waives to the fullest extent permitted by law any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. A final judgment (in respect of which time for all appeals has elapsed) in any such suit, action or proceeding shall be conclusive and may be enforced in any court to the jurisdiction of which such Obligor is or may be subject, by suit upon judgment.

12.11 Waiver of Jury Trial. EACH OBLIGOR AND EACH LENDER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

12.12 Waiver of Immunity. To the extent that any Obligor may be or become entitled to claim for itself or its Property or revenues any immunity on the ground of sovereignty or the like from suit, court jurisdiction, attachment prior to judgment, attachment in aid of execution of a judgment or execution of a judgment, and to the extent that in any such jurisdiction there may be attributed such an immunity (whether or not claimed), such Obligor hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity with respect to its obligations under this Agreement and the other Loan Documents.

12.13 Entire Agreement. This Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. EACH OBLIGOR ACKNOWLEDGES, REPRESENTS AND WARRANTS THAT IN DECIDING TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS OR IN TAKING OR NOT TAKING ANY ACTION HEREUNDER OR THEREUNDER, IT HAS NOT RELIED, AND WILL NOT RELY, ON ANY STATEMENT, REPRESENTATION, WARRANTY, COVENANT, AGREEMENT OR UNDERSTANDING, WHETHER WRITTEN OR ORAL, OF OR WITH THE LENDERS OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

12.14 Severability. If any provision hereof is found by a court to be invalid or unenforceable, to the fullest extent permitted by applicable law the parties agree that such invalidity or unenforceability shall not impair the validity or enforceability of any other provision hereof.

12.15 No Fiduciary Relationship. Borrower acknowledges that the Lenders have no fiduciary relationship with, or fiduciary duty to, Borrower arising out of or in connection with this Agreement or the other Loan Documents, and the relationship between the Lenders and the Borrower are solely that of creditor and debtor. This Agreement and the other Loan Documents do not create a joint venture among the parties.

12.16 Confidentiality. The Lenders agree to maintain the confidentiality of the Confidential Information (as defined in the Non-Disclosure Agreement (defined below)) in accordance with the terms of that certain non-disclosure agreement dated October 31, 2012 among Borrower and Capital Royalty, L.P (the "***Non-Disclosure Agreement***").

Any new Lender that becomes party to this Agreement hereby agrees to be bound by the terms of the Non-Disclosure Agreement. The parties to this Agreement shall prepare a mutually agreeable press release announcing the completion of this transaction on the Closing Date.

12.17 USA PATRIOT Act. The Lenders hereby notify the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "***Act***"), they are required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender to identify Borrower in accordance with the Act.

12.18 Maximum Rate of Interest. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (in each case, the "***Maximum Rate***"). If the Lenders shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans, and not to the payment of interest, or, if the excessive interest exceeds such unpaid principal, the amount exceeding the unpaid balance shall be refunded to the applicable Obligor. In determining whether the interest contracted for, charged, or received by the Lenders exceeds the Maximum Rate, the Lenders may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Indebtedness and other obligations of any Obligor hereunder, or (d) allocate interest between portions of such Indebtedness and other obligations under the Loan Documents to the end that no such portion shall bear interest at a rate greater than that permitted by applicable Law.

12.19 Real Property Security Waivers.

(A) Borrower acknowledges that all or any portion of the Obligations may now or hereafter be secured by a Lien or Liens upon real property evidenced by certain documents including, without limitation, deeds of trust and assignments of rents. Lenders may, pursuant to the terms of said real property security documents and applicable law, foreclose under all or any portion of one or more of said Liens by means of judicial or nonjudicial sale or sales. Borrower agrees that Lenders may exercise whatever rights and remedies they may have with respect to said real property security, all without affecting the liability of Borrower hereunder, except to the extent Lenders realize payment by such action or proceeding. Except as

provided under applicable law, no election to proceed in one form of action or against any party, or on any obligation shall constitute a waiver of Lenders' rights to proceed in any other form of action or against Borrower or any other Person, or diminish the liability of Borrower, or affect the right of Lenders to proceed against Borrower for any deficiency, except to the extent Lenders realize payment by such action, notwithstanding the effect of such action upon Borrower's rights of subrogation, reimbursement or indemnity, if any, against Borrower or any other Person.

(B) To the extent permitted under applicable law, Borrower hereby waives any rights and defenses that are or may become available to Borrower by reason of Sections 2787 to 2855, inclusive, of the California Civil Code.

(C) To the extent permitted under applicable law, Borrower hereby waives all rights and defenses that Borrower may have because the Obligations are or may be secured by real property. This means, among other things:

(1) Lenders may collect from Borrower without first foreclosing on any real or personal property collateral pledged by any other Obligor;

(2) If Lenders foreclose on any real property collateral pledged by Borrower:

i. The amount of the Loan may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and

ii. Lenders may collect from Borrower even if Lender, by foreclosing on the real property collateral, has destroyed any right Borrower may have to collect from any other Obligor.

To the extent permitted under applicable law, this is an unconditional and irrevocable waiver of any rights and defenses Borrower may have because the Obligations hereunder are or may be secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure.

(D) To the extent permitted under applicable law, Borrower waives all rights and defenses arising out of an election of remedies by Lenders, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Borrower's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the California Code of Civil Procedure or otherwise.

(E) **Waiver of Marshaling.** Without limiting the foregoing in any way, each Obligor hereby irrevocably waives and releases, to the extent permitted by Law, any and all rights it may have at any time (whether arising directly or indirectly, by operation of law, contract or otherwise) to require the marshaling of any assets of any Obligor, which right of marshaling might otherwise arise from any payments made or obligations performed.

SECTION 13
GUARANTEE

13.01 The Guarantee. The Subsidiary Guarantors hereby jointly and severally guarantee to the Lenders and their successors and assigns the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of the principal of and interest on the Loans and all fees and other amounts from time to time owing to the Lenders by Borrower under this Agreement or under any other Loan Document and by any other Obligor under any of the Loan Documents, in each case strictly in accordance with the terms thereof (such obligations being herein collectively called the "***Guaranteed Obligations***"). The Subsidiary Guarantors hereby further jointly and severally agree that if Borrower shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Subsidiary Guarantors will promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

13.02 Obligations Unconditional. The obligations of the Subsidiary Guarantors under **Section 13.01** are absolute and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the obligations of Borrower under this Agreement or any other agreement or instrument referred to herein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this **Section 13.02** that the obligations of the Subsidiary Guarantors hereunder shall be absolute and unconditional, joint and several, under any and all circumstances. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Subsidiary Guarantors hereunder, which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to the Subsidiary Guarantors, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(b) any of the acts mentioned in any of the provisions of this Agreement or any other agreement or instrument referred to herein shall be done or omitted;

(c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be modified, supplemented or amended in any respect, or any right under this Agreement or any other agreement or instrument referred to herein shall be waived or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with; or

(d) any lien or security interest granted to, or in favor of, the Lenders as security for any of the Guaranteed Obligations shall fail to be perfected.

The Subsidiary Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Lenders exhaust any right, power or remedy or proceed against Borrower under this Agreement or any other agreement or instrument referred to herein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations.

13.03 Reinstatement. The obligations of the Subsidiary Guarantors under this **Section 13** shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of Borrower in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Subsidiary Guarantors jointly and severally agree that they will indemnify the Lenders on demand for all reasonable costs and expenses (including fees of counsel) incurred by the Lenders in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

13.04 Subrogation. The Subsidiary Guarantors hereby jointly and severally agree that until the payment and satisfaction in full of all Guaranteed Obligations and the expiration and termination of the Commitment of the Lenders under this Agreement they shall not exercise any right or remedy arising by reason of any performance by them of their guarantee in **Section 13.01**, whether by subrogation or otherwise, against Borrower or any other guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations.

13.05 Remedies. The Subsidiary Guarantors jointly and severally agree that, as between the Subsidiary Guarantors and the Lenders, the obligations of Borrower under this Agreement and under the other Loan Documents may be declared to be forthwith due and payable as provided in **Section 11** (and shall be deemed to have become automatically due and payable in the circumstances provided in **Section 11**) for purposes of **Section 13.01** notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by Borrower) shall forthwith become due and payable by the Subsidiary Guarantors for purposes of **Section 13.01**.

13.06 Instrument for the Payment of Money. Each Subsidiary Guarantor hereby acknowledges that the guarantee in this **Section 13** constitutes an instrument for the payment of money, and consents and agrees that the Lender, at its sole option, in the event of a dispute by such Subsidiary Guarantor in the payment of any moneys due hereunder, shall have the right to proceed by motion for summary judgment in lieu of complaint pursuant to N.Y. Civ. Prac. L&R § 3213.

13.07 Continuing Guarantee. The guarantee in this **Section 13** is a continuing guarantee, and shall apply to all Guaranteed Obligations whenever arising.

13.08 Rights of Contribution. The Subsidiary Guarantors hereby agree, as between themselves, that if any Subsidiary Guarantor shall become an Excess Funding Guarantor (as

defined below) by reason of the payment by such Subsidiary Guarantor of any Guaranteed Obligations, each other Subsidiary Guarantor shall, on demand of such Excess Funding Guarantor (but subject to the next sentence), pay to such Excess Funding Guarantor an amount equal to such Subsidiary Guarantor's Pro Rata Share (as defined below and determined, for this purpose, without reference to the properties, debts and liabilities of such Excess Funding Guarantor) of the Excess Payment (as defined below) in respect of such Guaranteed Obligations. The payment obligation of a Subsidiary Guarantor to any Excess Funding Guarantor under this **Section 13.08** shall be subordinate and subject in right of payment to the prior payment in full of the obligations of such Subsidiary Guarantor under the other provisions of this **Section 13** and such Excess Funding Guarantor shall not exercise any right or remedy with respect to such excess until payment and satisfaction in full of all of such obligations.

For purposes of this **Section 13.08**, (i) "***Excess Funding Guarantor***" means, in respect of any Guaranteed Obligations, a Subsidiary Guarantor that has paid an amount in excess of its Pro Rata Share of such Guaranteed Obligations, (ii) "***Excess Payment***" means, in respect of any Guaranteed Obligations, the amount paid by an Excess Funding Guarantor in excess of its Pro Rata Share of such Guaranteed Obligations and (iii) "***Pro Rata Share***" means, for any Subsidiary Guarantor, the ratio (expressed as a percentage) of (x) the amount by which the aggregate present fair saleable value of all properties of such Subsidiary Guarantor (excluding any shares of stock of any other Subsidiary Guarantor) exceeds the amount of all the debts and liabilities of such Subsidiary Guarantor (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of such Subsidiary Guarantor hereunder and any obligations of any other Subsidiary Guarantor that have been Guaranteed by such Subsidiary Guarantor) to (y) the amount by which the aggregate fair saleable value of all properties of all of the Subsidiary Guarantors exceeds the amount of all the debts and liabilities (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of the Borrower and the Subsidiary Guarantors hereunder and under the other Loan Documents) of all of the Subsidiary Guarantors, determined (A) with respect to any Subsidiary Guarantor that is a party hereto on the Closing Date, as of the Closing Date, and (B) with respect to any other Subsidiary Guarantor, as of the date such Subsidiary Guarantor becomes a Subsidiary Guarantor hereunder.

13.09 General Limitation on Guarantee Obligations. In any action or proceeding involving any provincial, territorial or state corporate law, or any state or federal bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Subsidiary Guarantor under **Section 13.01** would otherwise, taking into account the provisions of **Section 13.08**, be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under **Section 13.01**, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Subsidiary Guarantor, the Lenders or any other Person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

13.10 Additional Waivers.

(a) To the extent permitted under applicable law, each Subsidiary Guarantor hereby waives any rights and defenses that are or may become available to Subsidiary Guarantor by reason of Sections 2787 to 2855, inclusive, of the California Civil Code.

(b) To the extent permitted under applicable law, each Subsidiary Guarantor hereby waives all rights and defenses that Subsidiary Guarantor may have because the Obligations are or may be secured by real property. This means, among other things:

(i) Lenders may collect from any Subsidiary Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower;

(ii) If Lenders foreclose on any real property collateral pledged by Borrower:

(A) The amount of the Loan may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and

(B) Lenders may collect from each Subsidiary Guarantor even if Lenders, by foreclosing on the real property collateral, has destroyed any right such Subsidiary Guarantor may have to collect from Borrower.

To the extent permitted under applicable law, this is an unconditional and irrevocable waiver of any rights and defenses each Subsidiary Guarantor may have because the Obligations are or may be secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure.

(c) To the extent permitted under applicable law, each Subsidiary Guarantor waives all rights and defenses arising out of an election of remedies by Lenders, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed such Subsidiary Guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the California Code of Civil Procedure or otherwise.

(d) To the extent permitted under applicable law, each Subsidiary Guarantor hereby waives any right or defense it may have at law or equity, including California Code of Civil Procedure Section 580a, to a fair market value hearing or action to determine a deficiency judgment after a foreclosure.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

BORROWER:

TANDEM DIABETES CARE, INC.

By */S/ Kim Blickenstaff*
Name: Kim Blickenstaff
Title: President and Chief Executive Officer

Address for Notices:

11045 Roselle Street
San Diego, CA 92121

Attn: Chief Executive Officer
Tel.: 858-366-6876
Fax: 858-202-6707
Email: kblickenstaff@tandemdiabetes.com

LENDERS:

CAPITAL ROYALTY PARTNERS II L.P.

By CAPITAL ROYALTY PARTNERS II GP L.P., its General Partner

By CAPITAL ROYALTY PARTNERS II GP LLC, its General Partner

By */S/ Charles Tate*
Name: Charles Tate
Title: Sole Member

Address for Notices:
1000 Main Street, Suite 2500
Houston, TX 77002
Attn: General Counsel
Tel.: 713.209.7350
Fax: 713.209.7351
Email: adorenbaum@capitalroyalty.com

CAPITAL ROYALTY PARTNERS II – PARALLEL FUND "A" L.P.

By CAPITAL ROYALTY PARTNERS II— PARALLEL FUND "A" GP L.P., its General Partner

By CAPITAL ROYALTY PARTNERS II – PARALLEL FUND "A" GP LLC, its General Partner

_ By */S/ Charles Tate*
Name: Charles Tate
Title: Sole Member

Address for Notices:
1000 Main Street, Suite 2500
Houston, TX 77002
Attn: General Counsel
Tel.: 713.209.7350
Fax: 713.209.7351
Email: adorenbaum@capitalroyalty.com

PARALLEL INVESTMENT OPPORTUNITIES PARTNERS II L.P.

By PARALLEL INVESTMENT OPPORTUNITIES PARTNERS II GP L.P., its General Partner

By PARALLEL INVESTMENT OPPORTUNITIES PARTNERS II GP LLC, its General Partner

By */S/ Charles Tate*
Name: Charles Tate
Title: Sole Member

Address for Notices:

1000 Main Street, Suite 2500
Houston, TX 77002
Attn: General Counsel
Tel.: 713.209.7350
Fax: 713.209.7351
Email: adorenbaum@capitalroyalty.com

CAPITAL ROYALTY PARTNERS II (CAYMAN) L.P.

By CAPITAL ROYALTY PARTNERS II (CAYMAN) GP L.P., its General Partner

By CAPITAL ROYALTY PARTNERS II (CAYMAN) GP LLC, its General Partner

By */S/ Charles Tate*
Name: Charles Tate
Title: Sole Member

WITNESS:
Name:

Address for Notices:
1000 Main Street, Suite 2500
Houston, TX 77002
Attn: General Counsel
Tel.: 713.209.7350
Fax: 713.209.7351
Email: adorenbaum@capitalroyalty.com

Schedule 1
to Term Loan Agreement

COMMITMENTS

Lender	Commitment	Proportionate Share
Capital Royalty Partners II L.P.	$ 7,100,179.10	23.67%
Capital Royalty Partners II – Parallel Fund "A" L.P.	$10,390,678.71	34.64%
Parallel Investment Opportunities Partners II L.P.	$10,000,000.00	33.33%
Capital Royalty Partners II (Cayman) L.P.	$ 2,509,142.19	8.36%
TOTAL	**$ 30,000,000**	**100%**

Schedule 7.03
to Term Loan Agreement

GOVERNMENTAL AND OTHER APPROVALS; NO CONFLICTS

1. Amended and Restated Loan and Security Agreement, dated January 14, 2013, by and between Borrower and Silicon Valley Bank, as may be amended from time to time.

CERTAIN INTELLECTUAL PROPERTY

Schedule 7.05(b)(i)(A)

See attached docket reports

Schedule 7.05(b)(i)(B)

See attached docket reports

Schedule 7.05(b)(i)(C)

See attached docket reports

Schedule 7.05(b)(ii)(E)

Borrower believes that certain of the Obligor Intellectual Property to which Borrower obtained title pursuant to the "Confidential Intellectual Property Agreement" by and between Borrower and Smiths Medical ASD, Inc. dated July 10, 2012 may be infringed, violated, misappropriated or otherwise used by one or more Persons that compete with Borrower. Borrower is analyzing such Obligor Intellectual Property.

Schedule 7.05(b)(iii)(A)

Borrower believes that all or most of the Patents to which Borrower obtained title pursuant to the "Confidential Intellectual Property Agreement" by and between Borrower and Smiths Medical ASD, Inc. dated July 10, 2012 are valid and enforceable; however, Borrower is analyzing certain of these Patents.

Schedule 7.05(c)
to Term Loan Agreement

MATERIAL INTELLECTUAL PROPERTY

Docket Number	Title	Series No. / Filing Date Patent No. / Issue Date
4574.03US01 United States of America	Infusion System with Disposable Cartridge Having Pressure Venting and Pressure Feedback	10/086,641 02/28/2002 **US 6,852,104** 02/8/2005
[***]	[***]	[***]
4574.16US02 United States of America	Methods and Devices for Determination of Flow Reservoir Volume	12/714,299 02/26/2010 **US 8,573,027** 11/05/2013
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
4574.25US05 United States of America	Infusion Pump System With Disposable Cartridge Having Pressure Venting and Pressure Feedback	12/846,733 07/29/2010 **US 8,641,671** 02/04/2014
[***]	[***]	[***]
4574.25US07 United States of America	Infusion Pump System With Disposable Cartridge Having Pressure Venting and Pressure Feedback	13/270,160 10/10/2011 **US 8,287,495** 10/16/2012

[***]: CONFIDENTIAL PORTIONS OMITTED AND FILED SEPARATELY WITH THE COMMISSION.

4574.25US08 United States of America	Infusion Pump System With Disposable Cartridge Having Pressure Venting and Pressure Feedback	13/271,156 10/11/2011 **US 8,298,184** 10/30/2012
4574.25EP Europe	Infusion Pump System With Disposable Cartridge Having Pressure Venting and Pressure Feedback	10805076.6 07/29/2010 **EP 2459251** 03/12/2014 (DE, FR, GB)
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
4576.23US01 United States of America	Insulin Pump Having Missed Meal Bolus Alarm	10/087,460 02/28/2002
(in-licensed)		**US 6,744,350** 06/01/2004

[***]: CONFIDENTIAL PORTIONS OMITTED AND FILED SEPARATELY WITH THE COMMISSION.

4576.25US02 United States of America	Insulin Pump Having Missed Meal Bolus Alarm	13/481,050 05/25/2012
(in-licensed)		**US 8,690,856** 04/08/2014
[***]	[***]	[***]
[***]	[***]	[***]

[***]: CONFIDENTIAL PORTIONS OMITTED AND FILED SEPARATELY WITH THE COMMISSION.

Schedule 7.06
to Term Loan Agreement

CERTAIN LITIGATION

[***]

[***]: CONFIDENTIAL PORTIONS OMITTED AND FILED SEPARATELY WITH THE COMMISSION.

TAXES

None

Schedule 7.12
to Term Loan Agreement

INFORMATION REGARDING SUBSIDIARIES

None

Schedule 7.13(b)-1
to Term Loan Agreement

EXISTING INDEBTEDNESS OF BORROWER AND ITS SUBSIDIARIES

1. The Borrower is currently a party to the Amended and Restated Loan and Security Agreement, dated January 14, 2013, by and between Borrower and Silicon Valley Bank, as may be amended from time to time. No amounts are current outstanding under this loan.

Schedule 7.13(b)-2
to Term Loan Agreement

LIENS GRANTED BY THE OBLIGORS

1. The Borrower has granted certain Liens to Silicon Valley Bank pursuant to the Amended and Restated Loan and Security Agreement, dated January 14, 2013, by and between Borrower and Silicon Valley Bank, as may be amended from time to time.

2. State of Mississippi State Tax Lien – $2,026.

3. State of South Carolina State Tax Lien – $1,225.

Schedule 7.14
to Term Loan Agreement

MATERIAL AGREEMENTS OF EACH OBLIGOR

1. Lease Agreement, dated March 7, 2012, as amended through November 7, 2013, by and between Borrower and ARE-11025/11075 Roselle Street, LLC.
2. Lease Agreement, dated November 5, 2013, by and between Borrower and ARE-11025/11075 Roselle Street, LLC.
3. Confidential Intellectual Property Agreement, dated July 10, 2012, by and between Borrower and Smiths Medical ASD, Inc.
4. Amended and Restated Development and Commercialization Agreement, dated January 4, 2013, by and between Borrower and DexCom, Inc.
5. Research, Development and Commercialization Agreement, dated January 2, 2013, by and between Borrower and JDRF.

Schedule 7.15
to Term Loan Agreement

PERMITTED RESTRICTIVE AGREEMENTS

1. Amended and Restated Loan and Security Agreement, dated January 14, 2013, by and between Borrower and Silicon Valley Bank, as may be amended from time to time.

Schedule 7.16
to Term Loan Agreement

REAL PROPERTY OWNED OR LEASED BY BORROWER AND SUBSIDIARIES

1. Lease Agreement, dated March 7, 2012, as amended through November 7, 2013, by and between Borrower and ARE-11025/11075 Roselle Street, LLC.
2. Lease Agreement, dated November 5, 2013, by and between Borrower and ARE-11025/11075 Roselle Street, LLC.

Schedule 7.17
to Term Loan Agreement

PENSION MATTERS

1. Tandem Diabetes Care, Inc. 401(k) Plan
2. Tandem Diabetes Care, Inc. Employee Handbook
3. Tandem Diabetes Care, Inc. Travel and Expense Policies
4. Tandem Diabetes Care, Inc. 2014 Cash Bonus Plan

Schedule 8.15(a)
to Term Loan Agreement

JURISDICTIONS FOR FOREIGN INTELLECTUAL PROPERTY FILINGS

1. Australia

2. Canada

3. China

4. Europe: rights in various European countries through the European Patent Organisation (for Patents) and the European Union (via the Community Trade Mark system for Trademarks).

5. India

6. Japan

7. Korea

8. Member states of the World Intellectual Property Organisation per international applications for Patents filed via the Patent Cooperation treaty (PCT).

Schedule 9.05
to Term Loan Agreement

EXISTING INVESTMENTS

1. Silicon Valley Bank Asset Management Account, where current total investment as of March 21, 2014 is $46,040,312.95. Funds are currently invested in Permitted Cash Equivalent Investments.

2. Capital Advisors Group Asset Management Account, where current total investment as of March 21, 2014 is $48,012,133.10. Funds are currently invested in Permitted Cash Equivalent Investments.

Schedule 9.10
to Term Loan Agreement

TRANSACTIONS WITH AFFILIATES

1. Third Amended and Restated Investors' Rights Agreement dated August 30, 2012, by and among the Borrower and certain stockholders of Borrower named there.

Schedule 9.14
to Term Loan Agreement

PERMITTED SALES AND LEASEBACKS

None

FORM OF GUARANTEE ASSUMPTION AGREEMENT

GUARANTEE ASSUMPTION AGREEMENT dated as of [DATE] by [NAME OF ADDITIONAL SUBSIDIARY GUARANTOR], a [corporation][limited liability company] (the "***Additional Subsidiary Guarantor***"), in favor of Capital Royalty Partners II L.P., Capital Royalty Partners II – Parallel Fund "A" L.P., Parallel Investment Opportunities Partners II L.P., Capital Royalty Partners II (Cayman) L.P. and other parties from time to time party thereto as lenders (the "***Lenders***") under that certain Term Loan Agreement, dated as of April 4, 2014 (as amended, restated, supplemented or otherwise modified, renewed, refinanced or replaced, the "***Loan Agreement***"), among Tandem Diabetes Care, Inc., a Delaware corporation ("***Borrower***"), the lenders party thereto and the Subsidiary Guarantors party thereto.

Pursuant to **Section 8.12(a)** of the Loan Agreement, the Additional Subsidiary Guarantor hereby agrees to become a "Subsidiary Guarantor" for all purposes of the Loan Agreement, and a "Grantor" for all purposes of the Security Agreement. Without limiting the foregoing, the Additional Subsidiary Guarantor hereby, jointly and severally with the other Subsidiary Guarantors, guarantees to the Lenders and their successors and assigns the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of all Guaranteed Obligations (as defined in **Section 13.01** of the Loan Agreement) in the same manner and to the same extent as is provided in **Section 13** of the Loan Agreement. In addition, as of the date hereof, the Additional Subsidiary Guarantor hereby makes the representations and warranties set forth in **Sections 7.01**, **7.02**, **7.03**, **7.05(a)**, **7.06(a)**, **7.06(b)**, **7.07**, **7.08** and **7.18** of the Loan Agreement, and in **Section 2** of the Security Agreement, with respect to itself and its obligations under this Agreement and the other Loan Documents, as if each reference in such Sections to the Loan Documents included reference to this Agreement, such representations and warranties to be made as of the date hereof.

The Additional Subsidiary Guarantor hereby instructs its counsel to deliver the opinions referred to in **Section 8.12(a)** of the Loan Agreement to the Lenders.

IN WITNESS WHEREOF, the Additional Subsidiary Guarantor has caused this Guarantee Assumption Agreement to be duly executed and delivered as of the day and year first above written.

[ADDITIONAL SUBSIDIARY GUARANTOR]

By _____
Name:
Title:

Exhibit B
to Term Loan Agreement

FORM OF NOTICE OF BORROWING

Date : [ ]

To: Capital Royalty Partners II L.P. and the other Lenders
1000 Main Street, Suite 2500
Houston, TX 77002
Attn: General Counsel

Re: Borrowing under Term Loan Agreement

Ladies and Gentlemen:

The undersigned, Tandem Diabetes Care, Inc., a Delaware corporation ("***Borrower***"), refers to the Term Loan Agreement, dated as of April 4, 2014 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "***Loan Agreement***"), among Borrower, Capital Royalty Partners II L.P., Capital Royalty Partners II – Parallel Fund "A" L.P., Parallel Investment Opportunities Partners II L.P., Capital Royalty Partners II (Cayman) L.P. and other parties from time to time party thereto as lenders ("***Lenders***"), and the subsidiary guarantors from time to time party thereto. The terms defined in the Loan Agreement are herein used as therein defined.

Borrower hereby gives you notice irrevocably, pursuant to **Section 2.02** of the Loan Agreement, of the borrowing of the Loan specified herein:

1. The proposed Borrowing Date is [ ].

2. The amount of the proposed Borrowing is $[ ].

3. The payment instructions with respect to the funds to be made available to the Borrower are as follows:

Bank name: [ ]
Bank Address: [ ]
Routing Number: [ ]
Account Number: [ ]
Swift Code: [ ]

The Borrower hereby certifies that the following statements are true on the date hereof, and will be true on the date of the proposed borrowing of the Loan, before and after giving effect thereto and to the application of the proceeds therefrom:

a) the representations and warranties made by the Borrower in **Section 7** [(other than **Section 7.20**)][1] of the Loan Agreement shall be true on and as of the Borrowing Date and immediately after giving effect to the application of the proceeds of the Borrowing with the same force and effect as if made on and as of such date except that the representation regarding representations and warranties that refer to a specific earlier date shall be that they were true on such earlier date;

b) on and as of the Borrowing Date, there shall have occurred no Material Adverse Change since [ ]; and

c) no Default exists or would result from such proposed borrowing.

1 Insert parenthesis if Borrower is no longer a "Small Business" at the timing of the Borrowing of the term loan.

IN WITNESS WHEREOF, the Borrower has caused this Notice of Borrowing to be duly executed and delivered as of the day and year first above written.

BORROWER:

TANDEM DIABETES CARE, INC.

By _____
Name:
Title:

Exhibit C-1
to Term Loan Agreement

FORM OF TERM LOAN NOTE

U.S. $[ ] [DATE]

FOR VALUE RECEIVED, the undersigned, Tandem Diabetes Care, Inc., a Delaware corporation ("***Borrower***"), hereby promises to pay to [Capital Royalty Partners II L.P./Capital Royalty Partners II – Parallel Fund "A" L.P./Parallel Investment Opportunities Partners II L.P./Capital Royalty Partners II (Cayman) L.P.] or its assigns (the "***Lender***") at the Lender's principal office in 1000 Main Street Suite 2500, Houston, TX 77002, in immediately available funds, the aggregate principal sum set forth above, or, if less, the aggregate unpaid principal amount of all Loans made by the Lender pursuant to **Section 2.01** of the Term Loan Agreement, dated as of April 4, 2014 (as amended, restated, supplemented or otherwise modified, renewed, refinanced or replaced, the "***Loan Agreement***"), among the Borrower, the Lender, the other lenders party thereto and the Subsidiary Guarantors party thereto, on the date or dates specified in the Loan Agreement, together with interest on the principal amount of such Loans from time to time outstanding thereunder at the rates, and payable in the manner and on the dates, specified in the Loan Agreement.

This Note is a Note issued pursuant to the terms of **Section 2.04** of the Loan Agreement, and this Note and the holder hereof are entitled to all the benefits and security provided for thereby or referred to therein, to which Loan Agreement reference is hereby made for a statement thereof. All defined terms used in this Note, except terms otherwise defined herein, shall have the same meaning as in the Loan Agreement.

THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION; *PROVIDED THAT* SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW SHALL APPLY.

THIS NOTE IS SUBJECT TO THE TERMS OF THE INTERCREDITOR AGREEMENT, DATED AS OF JANUARY 14, 2013, AMONG CAPITAL ROYALTY PARTNERS II L.P., CAPITAL ROYALTY PARTNERS II – PARALLEL FUND "A" L.P., AND SILICON VALLEY BANK, AS AMENDED, RESTATED OR MODIFIED FROM TIME TO TIME.

The Borrower hereby waives demand, presentment, protest or notice of any kind hereunder, other than notices provided for in the Loan Documents. The non-exercise by the holder hereof of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in such particular or any subsequent instance.

THIS NOTE MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS OF THE LOAN AGREEMENT.

TANDEM DIABETES CARE, INC.

By _____
Name:
Title:

Exhibit C-1

Exhibit C-2
to Term Loan Agreement

FORM OF PIK LOAN NOTE

U.S. $[ ] [DATE]

FOR VALUE RECEIVED, the undersigned, Tandem Diabetes Care, Inc. ("***Borrower***"), hereby promises to pay to [Capital Royalty Partners II L.P./Capital Royalty Partners II – Parallel Fund "A" L.P./Parallel Investment Opportunities Partners II L.P./Capital Royalty Partners II (Cayman) L.P.] or its assigns (the "***Lender***") at the Lender's principal office in1000 Main Street Suite 2500, Houston, TX 77002, in immediately available funds, the aggregate principal sum set forth above, or, if less, the aggregate unpaid principal amount of all PIK Loans made by the Lender pursuant to **Section 3.02(d)** of the Term Loan Agreement, dated as of April 4, 2014 (as amended, restated, supplemented or otherwise modified, renewed, refinanced or replaced, the "***Loan Agreement***"), among the Borrower, the Lender, the other lenders party thereto and the Subsidiary Guarantors party thereto, on the date or dates specified in the Loan Agreement, together with interest on the principal amount of such PIK Loans from time to time outstanding thereunder at the rates, and payable in the manner and on the dates, specified in the Loan Agreement.

This Note is a Note issued pursuant to the terms of **Section 3.02(d)** of the Loan Agreement, and this Note and the holder hereof are entitled to all the benefits and security provided for thereby or referred to therein, to which Loan Agreement reference is hereby made for a statement thereof. All defined terms used in this Note, except terms otherwise defined herein, shall have the same meaning as in the Loan Agreement.

The Lender may supplement this Note by attaching to this Note a schedule (the "***Note Schedule***") to evidence additional PIK Loans made by the Lender to Borrower following the date first above written. The Lender may endorse thereon the date such additional PIK Loan is made and the principal amount of such additional PIK Loan when made. Such Note Schedule shall form part of this Note and all references to this Note shall mean this Note, as supplemented by such Note Schedule.

THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION; *PROVIDED THAT* SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW SHALL APPLY.

THIS NOTE IS SUBJECT TO THE TERMS OF THE INTERCREDITOR AGREEMENT, DATED AS OF JANUARY 14, 2013, AMONG CAPITAL ROYALTY PARTNERS II L.P., CAPITAL ROYALTY PARTNERS II – PARALLEL FUND "A" L.P., AND SILICON VALLEY BANK, AS AMENDED, RESTATED OR MODIFIED FROM TIME TO TIME.

FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, AND THE RULES AND REGULATIONS THEREUNDER, THIS NOTE IS BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT; PLEASE CONTACT [NAME OF CFO OR TAX DIRECTOR OF ISSUER], [TITLE], [ADDRESS], TELEPHONE: [TEL #] TO OBTAIN INFORMATION REGARDING THE ISSUE PRICE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT AND THE YIELD TO MATURITY.

The Borrower hereby waives demand, presentment, protest or notice of any kind hereunder, other than notices provided for in the Loan Documents. The non-exercise by the holder hereof of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in such particular or any subsequent instance.

THIS NOTE MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS OF THE LOAN AGREEMENT.

TANDEM DIABETES CARE, INC.

By _____

Name:
Title:

PIK NOTE SCHEDULE

This Note Schedule supplements that certain Note issued by Borrower to [Capital Royalty Partners II L.P./Capital Royalty Partners II – Parallel Fund "A" L.P./Parallel Investment Opportunities Partners II L.P./Capital Royalty Partners II (Cayman) L.P.][2] or its assigns on [*DATE*].

Date of additional PIK Loan	**Amount of additional PIK Loan made**	**Notation made by[3]**

2 Delete as appropriate for each Note.

3 Insert name of party making notation (e.g. Borrower or Lender).

Exhibit D
to Term Loan Agreement

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

Reference is made to the Term Loan Agreement, dated as of April 4, 2014 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "***Loan Agreement***"), among Tandem Diabetes Care, Inc., a Delaware corporation ("***Borrower***"), Capital Royalty Partners II L.P., Capital Royalty Partners II – Parallel Fund "A" L.P., Parallel Investment Opportunities Partners II L.P., Capital Royalty Partners II (Cayman) L.P. and other parties from time to time party thereto as lenders ("***Lenders***"), and the subsidiary guarantors from time to time party thereto. [ ] (the "***Foreign Lender***") is providing this certificate pursuant to **Section 5.05(e)(ii)(B)** of the Loan Agreement. The Foreign Lender hereby represents and warrants that:

1. The Foreign Lender is the sole record owner of the Loans as well as any obligations evidenced by any Note(s) in respect of which it is providing this certificate;

2. The Foreign Lender's direct or indirect partners/members are the sole beneficial owners of the Loans as well as any obligations evidenced by any Note(s) in respect of which it is providing this certificate;

3. Neither the Foreign Lender nor its direct or indirect partners/members is a "bank" for purposes of Section 881(c)(3)(A) of the Internal Revenue Code of 1986, as amended (the "***Code***"). In this regard, the Foreign Lender further represents and warrants that:

(a) neither the Foreign Lender nor its direct or indirect partners/members is subject to regulatory or other legal requirements as a bank in any jurisdiction; and

(b) neither the Foreign Lender nor its direct or indirect partners/members has been treated as a bank for purposes of any tax, securities law or other filing or submission made to any Governmental Authority, any application made to a rating agency or qualification for any exemption from tax, securities law or other legal requirements;

3. Neither the Foreign Lender nor its direct or indirect partners/members is a 10-percent shareholder of Borrower within the meaning of Section 881(c)(3)(B) of the Code; and

4. Neither the Foreign Lender nor its direct or indirect partners/members is a controlled foreign corporation receiving interest from a related person within the meaning of Section 881(c)(3)(C) of the Code.

[Signature follows]

IN WITNESS WHEREOF, the undersigned has caused this certificate to be duly executed and delivered as of the date indicated below.

[NAME OF NON-U.S. LENDER]

By _____
Name:
Title:

Date: _____

FORM OF COMPLIANCE CERTIFICATE

[DATE]

This certificate is delivered pursuant to **Section 8.01(c)** of, and in connection with the consummation of the transactions contemplated in, the Term Loan Agreement, dated as of April 4, 2014 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "***Loan Agreement***"), among Tandem Diabetes Care, Inc., a Delaware corporation ("***Borrower***"), Capital Royalty Partners II L.P., Capital Royalty Partners II – Parallel Fund "A" L.P., Parallel Investment Opportunities Partners II L.P., Capital Royalty Partners II (Cayman) L.P. and other parties from time to time party thereto as lenders ("***Lenders***"), and the subsidiary guarantors from time to time party thereto. Capitalized terms used herein and not otherwise defined herein are used herein as defined in the Loan Agreement.

The undersigned, a duly authorized Responsible Officer of Borrower having the name and title set forth below under his signature, hereby certifies, on behalf of the Borrower for the benefit of the Lenders and pursuant to **Section 8.01(c)** of the Loan Agreement that such Responsible Officer of the Borrower is familiar with the Loan Agreement and that, in accordance with each of the following sections of the Loan Agreement, each of the following is true on the date hereof, both before and after giving effect to any Loan to be made on or before the date hereof:

In accordance with Section **8.01**[**(a)/(b)**] of the Loan Agreement, attached hereto as **Annex A** are the financial statements for the [fiscal quarter/fiscal year] ended [ ] required to be delivered pursuant to **Section 8.01**[**(a)/(b)**] of the Loan Agreement. Such financial statements fairly present in all material respects the consolidated financial position, results of operations and cash flow of the Borrower and its Subsidiaries as at the dates indicated therein and for the periods indicated therein in accordance with GAAP [(subject to the absence of footnote disclosure and normal year-end audit adjustments)][4] [without qualification as to the scope of the audit.][5]

Attached hereto as **Annex B** are the calculations used to determine compliance with each financial covenant contained in **Section 10** of the Loan Agreement.

No Default is continuing as of the date hereof[, except as provided for on **Annex C** attached hereto, with respect to each of which Borrower proposes to take the actions set forth on **Annex C**].

IN WITNESS WHEREOF, the undersigned has executed this certificate on the date first written above.

4 Insert language in brackets only for quarterly certifications.
5 Insert language in brackets only for annual certifications.

TANDEM DIABETES CARE, INC.

By _____
Name:
Title:

FINANCIAL STATEMENTS

[see attached]

Exhibit E-3

CALCULATIONS OF FINANCIAL COVENANT COMPLIANCE

I. **Section 10.01(a)(i)-(vi): Minimum Revenue**

A. Revenue received during the twelve month period beginning on January 1, 2014: $_____
Test Period: January 1, 2014 to December 31, 2014
Is line I.A equal to or greater than $30,000,000? *Yes: In compliance; No: Not in compliance*

B. Revenue received during the twelve month period beginning on January 1, 2015: $_____
Test Period: January 1, 2015 to December 31, 2015
Is line I.B equal to or greater than $50,000,000? *Yes: In compliance; No: Not in compliance*

C. Revenue received during the twelve month period beginning on January 1, 2016: $_____
Test Period: January 1, 2016 to December 31, 2016
Is line I.C equal to or greater than $65,000,000? *Yes: In compliance; No: Not in compliance*

D. Revenue received during the twelve month period beginning on January 1, 2017: $_____
Test Period: January 1, 2017 to December 31, 2017
Is line I.D equal to or greater than $80,000,000? *Yes: In compliance; No: Not in compliance*

E. Revenue received during the twelve month period beginning on January 1, 2018: $_____
Test Period: January 1, 2018 to December 31, 2018
Is line I.D equal to or greater than $95,000,000? *Yes: In compliance; No: Not in compliance*

F. Revenue received during the twelve month period beginning on January 1, 201 $_____
Test Period: January 1, 201 to December 31, 201
Is line I.E equal to or greater than $95,000,000? *Yes: In compliance; No: Not in compliance*

II **Section 10.03: Minimum Cash**

A. Amount of unencumbered cash and Permitted Cash Equivalent Investments (which for greater certainty shall not include any undrawn credit lines), in each case, to the extent held in an account over which the Lenders have a first priority perfected security interest: $_____

B. The greater of: $_____
(1) $2,000,000 and
(2) to the extent Borrower has incurred Permitted Priority

Debt, the minimum cash balance required of Borrower by Borrower's Permitted Priority Debt creditors	
Is Line IIA equal to or greater than Line IIB?:	*Yes: In compliance; No: Not in compliance*

Exhibit 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Kim D. Blickenstaff, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Tandem Diabetes Care, Inc.

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) 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) 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

c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Tandem Diabetes Care, Inc.

By: */s/* Kim D. Blickenstaff
Kim D. Blickenstaff
President and Chief Executive Officer

Dated: May 6, 2014

Exhibit 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, John Cajigas, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Tandem Diabetes Care, Inc.

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) 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) 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

c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Tandem Diabetes Care, Inc.

By: */s/* John Cajigas
John Cajigas
Chief Financial Officer and Treasurer

Dated: May 6, 2014

Exhibit 32.1

CERTIFICATION
PURSUANT TO 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 Tandem Diabetes Care, Inc. (the "Company") for the period ended March 31, 2014, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Kim D. Blickenstaff, President and 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 my knowledge:

1. the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of the dates and for the periods presented.

Date: May 6 , 2014

/s/ Kim D. Blickenstaff
Kim D. Blickenstaff
President and Chief Executive Officer

This certification shall not be deemed "filed" for purposes of Section 18 of the Exchange Act or otherwise subject to the liability of Section 18 of the Exchange Act. Such certification shall not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except to the extent that the Company specifically incorporates it by reference.

Exhibit 32.2

CERTIFICATION
PURSUANT TO 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 Tandem Diabetes Care, Inc. (the "Company") for the period ended March 31, 2014, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John Cajigas, 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 my knowledge:

1. the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of the dates and for the periods presented.

Date: May 6 , 2014

/s/ John Cajigas
John Cajigas
Chief Financial Officer and Treasurer

This certification shall not be deemed "filed" for purposes of Section 18 of the Exchange Act or otherwise subject to the liability of Section 18 of the Exchange Act. Such certification shall not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except to the extent that the Company specifically incorporates it by reference.