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

Form 10-K/A
Amendment No. 1

(Mark One)

☑ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the fiscal year ended December 31, 2012

OR

o **PERIODIC REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from to

Commission file number: 0-28740

BioScrip, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**05-0489664**
(State of incorporation)	*(I.R.S. Employer Identification No.)*
100 Clearbrook Road, Elmsford NY	**10523**
(Address of principal executive offices)	*(Zip Code)*

Registrant's telephone number, including area code:
914-460-1600
Securities registered pursuant to Section 12(b) of the Act:
None
Securities registered pursuant to section 12(g) of the Act:
Common Stock, $.0001 par value

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

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

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

Indicate by check mark whether the registrant has submitted electronically and posted to 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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. o

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

Large accelerated filer o Accelerated filer ☑ Non-accelerated filer o Smaller reporting company o

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

The aggregate market value of the registrant's Common Stock held by non-affiliates of the registrant as of June 30, 2012, the last business day of the registrant's most recently completed second fiscal quarter, was approximately $182,899,703 based on the closing price of the Common Stock on the Nasdaq Global Market on such date.

On March 5, 2013, there were 57,035,125 shares of the registrant's Common Stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement for its 2013 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the close of the registrant's fiscal year are incorporated by reference into Part III of this Annual Report.

EXPLANATORY NOTE

BioScrip, Inc. (the "Company") is filing this Amendment No. 1 on Form 10-K/A (this "Amendment No. 1") to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2012 (the "Original Filing") filed with the Securities and Exchange Commission (the "SEC") on March 15, 2013, in response to comments received from the staff of the Division of Corporation Finance of the SEC (the "Comment Letter"). Pursuant to the Comment Letter, this Amendment No. 1 amends the Original Filing to (i) identify one of the Company's payors in Part I - Item 1 (Business), (ii) file as exhibits in Part IV - Item 15 (Exhibits), or incorporate by reference therein, as the case may be, the Company's letter agreements with certain of its executive officers, and (iii) include the signature of the Company's principal accounting officer.

This Amendment No. 1 includes currently dated certifications from the Company's principal executive officer and principal financial officer pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act of 2002, attached hereto as Exhibits 31.1, 31.2, 32.1 and 32.2. Except as specifically referenced herein, this Amendment No. 1 reflects matters as they existed on the Original Filing date of March 15, 2013, does not modify or update disclosures presented in the Original Filing and does not reflect any event occurring after the date of the Original Filing or modify or update those disclosures. Other forward-looking statements made in the Original Filing have not been revised to reflect events, results or developments that occurred or facts that became known to the Company after the date of the Original Filing, and such forward-looking statements should be read in conjunction with the Original Filing and the Company's filings with the SEC subsequent to the Original Filing, including any amendments to those filings. Accordingly, this Amendment No. 1 should be read in conjunction with the Original Filing and the Company's filings with the SEC subsequent to the Original Filing, including any amendments to those filings.

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PART I

This Annual Report contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements relate to expectations, beliefs, future plans and strategies, anticipated events or trends concerning matters that are not historical facts or that necessarily depend upon future events. In some cases, you can identify forward-looking statements by terms such as “may,” “will,” “should,” “could,” “would,” “expect,” “plan,” “anticipate,” “believe,” “estimate,” “project,” “predict,” “potential,” and similar expressions. Specifically, this Annual Report contains, among others, forward-looking statements about:

- our expectations regarding financial condition or results of operations in future periods;
- our future sources of, and needs for, liquidity and capital resources;
- our expectations regarding economic and business conditions;
- our expectations regarding potential legislative and regulatory changes impacting the level of reimbursement received from the Medicare and state Medicaid programs;
- our expectations regarding the size and growth of the market for our products and services;
- our business strategies and our ability to grow our business;
- the implementation or interpretation of current or future regulations and legislation, particularly governmental oversight of our business;
- our ability to maintain contracts and relationships with our customers;
- sales and marketing efforts;
- status of material contractual arrangements, including the negotiation or re-negotiation of such arrangements;
- future capital expenditures;
- our high level of indebtedness;
- our ability to make principal payments on our debt and satisfy the other covenants contained in our senior secured credit facility and other debt agreements;
- our ability to hire and retain key employees;
- our ability to successfully execute our succession plans;
- our ability to execute our acquisition and growth strategy;
- our ability to successfully integrate businesses we acquire; and
- other risks and uncertainties described from time to time in our filings with the SEC.

The forward-looking statements contained in this Annual Report reflect our current views about future events, are based on assumptions, and are subject to known and unknown risks and uncertainties. Many important factors could cause actual results or achievements to differ materially from any future results or achievements expressed in or implied by our forward-looking statements. Many of the factors that will determine future events or achievements are beyond our ability to control or predict. Certain of these are important factors that could cause actual results or achievements to differ materially from the results or achievements reflected in our forward-looking statements.

The forward-looking statements contained in this Annual Report reflect our views and assumptions only as of the date this Annual Report is signed. The reader should not place undue reliance on forward-looking statements. Except as required by law, we assume no responsibility for updating any forward-looking statements.

We qualify all of our forward-looking statements by these cautionary statements. In addition, with respect to all of our forward-looking statements, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995.

Item 1. *Business*

Overview

We are a national provider of home infusion and other home healthcare services that partners with patients, physicians, hospitals, healthcare payors and pharmaceutical manufacturers to provide clinical management solutions and the delivery of cost-effective access to prescription medications and home healthcare services. Our services are designed to improve clinical outcomes to patients with chronic and acute healthcare conditions while controlling overall healthcare costs. We were incorporated in Delaware in 1996 as MIM Corporation, with our primary business and operations being pharmacy benefit management services. Over the years, we have expanded our service offerings to include home infusion services and home health services which are now the primary drivers of our growth strategy.

Our platform provides nationwide service capabilities and the ability to deliver clinical management services that offer patients a high-touch, home-based and community-based care environment. Our core services are provided in coordination with, and under the direction of the patient's physician. Our infusion and home health professionals, including pharmacists, nurses, dieticians, respiratory therapists and physical therapists, work with the physician to develop a plan of care suited to our patients' specific needs. Whether in the home, physician office, ambulatory infusion center or other alternate site of care, we provide products, services and condition-specific clinical management programs, often tailored to improve the care of individuals with complex health conditions such as cancer, multiple sclerosis, organ transplants, bleeding disorders, rheumatoid arthritis, immune deficiencies and congestive heart failure.

As a result of the Company entering into the Asset Purchase Agreement, the Company reevaluated its operating and reportable segments, changing its operating and reportable segments from "Infusion/Home Health Services" and "Pharmacy Services" to its new operating and reportable segments: "Infusion Services", "Home Health Services" and "PBM Services". These three new operating and reportable segments reflect how the Company's chief operating decision maker now reviews the Company's results in terms of allocating resources and assessing performance.

Our Infusion Services segment provides services consisting of home infusion therapy, respiratory therapy and the provision of durable medical equipment products and services. Infusion services include the dispensing and administering of infusion-based drugs, which typically require additional nursing and clinical management services, equipment to administer the correct dosage and patient training designed to improve patient outcomes. Home infusion services also include the dispensing of certain self-injectible therapies.

Our Home Health Services segment provides services including the provision of skilled nursing services and therapy visits, private duty nursing services, hospice services, rehabilitation services and medical social services to patients primarily in their home.

Our integrated pharmacy benefit management ("PBM") services, which includes discount card programs, design programs and claims processing to offer customers and patients cost-effective access to pharmacy products and services through network pharmacy providers.

Business Outlook

In the fourth quarter of 2010, we commenced a strategic assessment of our business and operations. The assessment examined our market strengths and opportunities and compared our position to that of our competitors. As a result of the assessment, we focused our growth on investments in the Infusion and Home Health Services segments and elected to pursue offers for a large portion of our Pharmacy Services segment. Thus, on February 1, 2012, the Company entered into a Community Pharmacy and Mail Business Purchase Agreement (the "Asset Purchase Agreement") by and among Walgreen Co. and certain subsidiaries (collectively, the "Buyers") and the Company and certain subsidiaries (collectively, the "Sellers") with respect to the sale of certain assets, rights and properties (the "Pharmacy Services Asset Sale") relating to the Sellers' traditional and specialty pharmacy mail and community retail pharmacy store operations.

Pursuant to the terms of the Asset Purchase Agreement, we received a total purchase price of approximately $173.8 million during 2012, including approximately $158.8 million at closing (which included monies received for the inventories on hand attributable to the operations subject to the Pharmacy Services Asset Sale), and a subsequent additional purchase price payment of $15.0 million based on events related to the Buyer's retention of certain business after closing. Similarly, the Company may be required to refund up to approximately $6.4 million of the cash received to the Buyers under certain circumstances. Any gain associated with this contingency will be recorded when the final amount retained or refunded is known. The $173.8 million purchase price excluded all accounts receivable and working capital liabilities relating to the operations subject to the sale, which were retained by us. Approximately $50.8 million of these net assets were converted to cash subsequent to the sale.

We are continuing to execute our strategic plan and are investing in opportunities to maximize stockholder value going forward. We deployed the proceeds of the Pharmacy Services Asset Sale and our other assets in seeking business acquisition opportunities described below. We also paid off the balance of the line of credit following the sale and negotiated improved terms for its ongoing use.

On July 31, 2012, we acquired InfuScience, Inc. ("InfuScience") for a cash payment of $38.3 million. The purchase price could increase to $41.4 million based on the results of operations during the 24 month period following the closing. InfuScience operates businesses providing alternate site infusion pharmacy services. The acquisition has added five infusion centers located in Eagan, Minnesota; Omaha, Nebraska; Chantilly, Virginia; Charleston, South Carolina; and Savannah,Georgia.

Subsequent to December 31, 2012, we acquired all of the issued and outstanding equity of HomeChoice Partners, Inc., a Delaware corporation ("HomeChoice") pursuant to a Stock Purchase Agreement dated December 12, 2012 (the "Purchase Agreement") by and among the Company, HomeChoice, DaVita HealthCare Partners Inc., a Delaware corporation and majority stockholder of HomeChoice, and the other stockholders of HomeChoice. The purchase price was $70 million, subject to adjustment based in part on the net working capital of HomeChoice at closing (the "Purchase Price"). The Purchase Price may also be increased in an amount up to $20 million if HomeChoice reaches certain performance milestones in the two years following the closing. The Company funded the Acquisition with a combination of cash on hand and its revolving credit facility.

HomeChoice is a provider of alternate-site infusion pharmacy services. Headquartered in Norfolk, VA, HomeChoice services approximately 15,000 patients annually and has fourteen infusion pharmacy locations in Pennsylvania, Washington, DC, Maryland, Virginia, North Carolina, South Carolina, Georgia, Missouri, and Alabama. The acquisition was completed on February 1, 2013.

Other strategic options we may consider in addition to further acquisitions include redeeming all or a portion of the unsecured notes subject to the terms of our revolving credit facility and the indenture governing our the senior unsecured notes.

The Pharmacy Services Asset Sale discussed above caused us to perform a further strategic assessment of our business and operations in order to align our corporate structure with our remaining business operations. As a result of the reassessment and subsequent realignment, we have focused on expanding revenue opportunities and lowering corporate overhead as well as redeploying our resources strategically. These actions have resulted in write-downs of certain long−lived assets, employee severance, retention bonus payments and accelerated recognition of expense associated with certain of our contractual obligations. The impact of these efforts included a reduction in salaries, benefits, rent and other facility costs. The redeployment of resources following the Asset Sale has better positioned us for growth in our strategic areas of operation; however, the impact of these actions on our future Consolidated Financial Statements cannot be estimated.

Our Strengths

Our company has a number of competitive strengths, including:

We Have a Local Competitive Market Position within our National Platform and Infrastructure

As of December 31, 2012, we had a total of 81 locations in 24 states, encompassing 32 home nursing locations and 49 home infusion locations, including two contract affiliated infusion pharmacies. Our model combines local presence with comprehensive clinical programs for multiple therapies and specific delivery technologies (injectable and infusible). We also have the capabilities and payor relationships to distribute pharmaceuticals to all 50 states. We have more than 1,000 Managed Care Organizations ("MCO") relationships and are one of a limited number of pharmacy and home health services providers that can offer a truly national, integrated and comprehensive approach of managing a patient's chronic or acute conditions on behalf of his or her MCO, which generally favors fully integrated vendors that can provide high-touch pharmacy solutions to their patients.

Diversified Payor Base

We provide prescription drugs, infusion, home health and clinical management services to a broad range of commercial and governmental payors. One payor, UnitedHealthcare, accounted for 18% of consolidated revenue, and Medicare accounted for14% of consolidated revenue during the year ended December 31, 2012. No other single government payors accounted for more than 4% of combined consolidated revenue.

Effective Care Management Clinical Programs that Produce Positive Clinical Outcomes and Reduce Readmissions

We have diversified and comprehensive clinical programs across numerous therapeutic areas, designed to improve patient adherence and retention. Our home infusion business provides traditional infusion therapies for acute conditions with accompanying clinical management and home care. Our infusion product offerings and services are also designed to treat patients with chronic infusion needs. In addition to the long-term treatment associated with these chronic conditions, these conditions require ongoing caregiver counseling and education regarding patient treatment and ongoing monitoring to encourage patients to comply with the prescribed therapy, including programs for enteral and total parenteral nutrition and pediatric infusion.

BioScrip's Centers of Excellence focus interdisciplinary teams on providing clinical excellence with outstanding personal service. Externally qualified by a panel of leading industry experts, the Centers employ evidence-based standards of care, policies, and procedures built on industry-recognized best practices. They are led by specialists with advanced certifications and training

who are dedicated to developing, improving, and sustaining clinical services to achieve optimal patient outcomes and exceed the expectations of patients and referral sources.

Our clinical management programs offer a number of multiple disease-state therapy regimens, increasing the number of opportunities to cross-sell services and technologies. We believe we have earned a positive reputation among all of our stakeholders — patients, physicians, payors and pharmaceutical manufacturers — by providing quality service and favorable clinical outcomes. We believe our platform provides the necessary programs and services for better and more efficient clinical outcomes for our clients.

Products and Services

Infusion Services

We are one of the larger providers of home infusion services in the United States. Home infusion involves the preparation, delivery, administration and clinical monitoring of pharmaceutical treatments that are administered to a patient via intravenous (into the vein), subcutaneous (into the fatty layer under the skin), intramuscular (into the muscle) and intra-spinal (into the membranes around the spinal cord) methods. These methods are employed when a physician determines that the best outcome can be achieved through utilization of one or more of the therapies provided through the routes of administration described above.

Our home infusion services primarily involve the intravenous administration of medications treating a wide range of acute and chronic conditions, such as infections, nutritional deficiencies, various immunologic and neurologic disorders, cancer, pain and palliative care. Our services are usually provided in the patient's home but may also be provided at outpatient clinics, the physician's office or at one of our ambulatory infusion centers. We receive payment for our home health services and medications pursuant to provider agreements with government sources, such as Medicare and Medicaid programs, managed care organizations ("MCOs") and other commercial insurance ("Third Party Payors").

We provide a wide array of home infusion products and services to meet the diverse needs of physicians, patients and payors. Diseases commonly requiring infusion therapy include infections that are unresponsive to oral antibiotics, cancer and cancer-related pain, dehydration and gastrointestinal diseases or disorders that prevent normal functioning of the gastrointestinal tract, which require IV fluids, parenteral or enteral nutrition. Other conditions treated with infusion therapies may include chronic diseases such as congestive heart failure, Crohn's disease, hemophilia, immune deficiencies, multiple sclerosis, rheumatoid arthritis, growth disorders and genetic enzyme deficiencies, such as Gaucher's or Pompe's disease. The therapies most commonly provided are listed below:

Therapy Type	Description
Parenteral Nutrition (PN)	Provide intravenous nutrition customized to the nutritional needs of the patient. PN is used in patients that cannot meet their nutritional needs via other means due to disease process or as a complication of a disease process, surgical procedure or congenital anomaly. PN may be used short term or chronically.
Enteral Nutrition (EN)	Provide nutrition directly to the stomach or intestine in patients who cannot chew or swallow nutrients in the usual manner. EN may be delivered via a naso-gastric tube or a tube placed directly into the stomach or intestine. EN may be used short term or chronically.
Antimicrobial Therapy	Provide intravenous antimicrobial medications used in the treatment of patients with various infectious processes such as: HIV/AIDS, wound infections, pneumonia, osteomyelitis, cystic fibrosis, Lyme's disease and cellulitis. May also be used in patients with disease processes or therapies that may lead to infections when oral antimicrobials are not effective.
Chemotherapy	Provide injectable and/or infused medications in the home or the prescriber's office for the treatment of cancer. Adjuvant medications may also be provided to minimize the side effects associated with chemotherapy.
Immune Globulin (IG) Therapy	Provide immune globulins intravenously or subcutaneously on an as-needed basis in patients with immune deficiencies or auto-immune diseases. This therapy may be chronic based on the etiology of the immune deficiency.
Pain Management	Provide analgesic medications intravenously, subcutaneously or epidurally. This therapy is generally administered as a continuous infusion via an internal or external infusion pump to treat severe pain associated with diseases such as COPD, cancer and severe injury.
Blood Factor Therapies	Provide medications to patients with one of several inherited bleeding disorders in which a patient does not manufacture the clotting factors necessary or use the clotting factors their liver makes appropriately in order to halt an external or internal bleed in response to a physical injury or trauma.
Inotropes Therapy	Provide intravenous inotropes in the home for the treatment of heart failure, either in anticipation of cardiac transplant or to provide palliation of heart failure symptoms. Inotropes increase the strength of weak heart muscles to pump blood. The therapy is only started in late phase heart failure when alternative therapies proved inadequate.
Respiratory Therapy/Home Medical Equipment	Provide oxygen systems, continuous or bi-level positive airway pressure devices, nebulizers, home ventilators, respiratory devices, respiratory medications and other medical equipment.

Patients generally are referred to us by physicians, hospital discharge planners, MCOs and other referral sources. Our medications are compounded and dispensed under the supervision of a registered pharmacist in a state licensed pharmacy that is accredited by an independent accrediting organization. The accrediting organization surveys for compliance with the USP 797 standards for sterile drug compounding pharmacies and has confirmed that we are in compliance with such standards. The therapy is typically administered in the patient's home by a registered nurse or trained caregiver. Depending on the preferences of the patient or the payor, these services may also be provided at one of our ambulatory infusion centers, a physician's office or another alternate site of administration.

We currently have relationships with a large number of MCOs and other Third Party Payors to provide pharmacy products and services, including infusion services. These relationships are primarily at a local or regional level. A key element of our business strategy is to leverage our relationships, geographic coverage, clinical expertise and reputation in order to gain contracts with payors. Our infusion service contracts typically provide for us to receive a fee for preparing and delivering medications and related equipment to patients in their homes. Pricing is typically negotiated in advance on the basis of Average Wholesale Price ("AWP") minus some percentage of contractual discount, or Average Selling Price ("ASP") plus some percentage. In addition, we typically receive a per diem payment for the service and supplies component of care provided to patients in connection with infusion services and a visit rate for the associated skilled nursing provided.

Home Health Services

We conduct our home nursing and therapy services through state-licensed as well as Medicare-certified agencies. Our healthcare professionals provide healthcare services to adult and pediatric patients in their homes, including those suffering from chronic and acute illnesses, those in recovery from surgical procedures and those who require monitoring or care for other reasons. Our key services and program offerings are skilled nursing; wound care; oncology nursing and infusion nursing; rehabilitation

services, which includes physical therapy; occupational therapy and speech language pathology; medical social services; and home health aide services. Our services are provided by registered nurses, licensed practical nurses, physical, occupational and speech therapists, infusion specialists, wound care specialists and social workers. Our home nursing offerings also include private duty nursing care, in which our nurses provide services on an hourly or shift basis, and intermittent nursing care, in which our nurses provide services on an irregular basis or for a limited period of time. Our nurses provide medical care to these patients through pain and symptom management, wound treatment and management, medication management, infusion therapy services, skilled assessment and observations of patients through home visits and telemonitoring and education to patients and family caregivers.

Most of our home nursing services are provided to beneficiaries of government sponsored programs. The majority of our skilled home nursing services are reimbursed by Medicare, based on the "prospective payment system" rates per episode, which varies with the complexity of patient condition. Our private duty nursing services are generally billed on an hourly basis and are reimbursed primarily through one of a number of MCOs contracted by the TennCare program to administer these services on behalf of state residents who qualify for such benefits.

PBM Services

We also provide prescription discount card programs and integrated PBM services. These services are designed to offer employers, MCOs, Third Party Administrators (“TPAs”), and other third party payors (collectively, "Plan Sponsors") cost-effective delivery of pharmacy benefit plans including the low cost distribution of mail services for plan members who receive traditional maintenance medications through our network pharmacies that deliver traditional and specialty medications through mail facilities and retail stores.

Prescription Discount Card Programs

Our discount card services provide a cost effective alternative for individuals who may be uninsured, underinsured or may have restrictive coverage that disallows reimbursement for certain medications. Under these discount programs, individuals who present a discount card at one of our participating network pharmacies receive prescription medications at a discounted price as compared to the retail price. The discount card programs are designed and marketed by consumer marketing organizations with which we contract. The marketing organizations receive a broker fee or commission for the sales generated. We contract with a third party PBM to process our discount card claims.

PBM Formulary and Benefit Design

Our funded PBM business involves working with our Plan Sponsors to offer formularies and benefit plan designs that meet their specific program requirements. Formulary design assists in controlling program costs to the extent consistent with accepted medical and pharmacy practices and applicable law, primarily through three principal techniques: (i) tiered co-pay or percentage coinsurance designs, which provide lower co-pays for formulary preferred medications and higher co-pays for non-preferred medications, or charge a percentage of the prescription price to the member at different percentages based on the preferred or non-preferred status of a drug; (ii) generic substitution, which involves the selection of a generic drug as a cost-effective alternative to its bio-equivalent brand name drug; and/or (iii) therapeutic interchange, which involves the selection of a lower cost brand name drug as an alternative to a higher priced brand name drug within a therapeutic class. Formulary rebates on brand name drugs are negotiated with drug manufacturers based on the drug's preferred status and are typically shared with Plan Sponsors. Our rebates are managed and administered by a third party vendor.

PBM Drug Usage Evaluation

Drug usage is evaluated on a concurrent, prospective and/or retrospective basis utilizing the real-time POS system and information systems for multiple drug interactions, duplication of therapy, step therapy protocol enforcement, minimum/maximum dose range edits, compliance with prescribed utilization levels and early refill notification. In addition, we maintain a drug utilization review program through which select medication therapies are reviewed and data is collected, analyzed and reported for management applications.

Sales and Marketing

We have over 150 sales and marketing representatives and over 1,000 payor relationships including Managed Care Organizations (MCOs), Medicare Part D pharmacy networks, and government programs such as Medicare and Medicaid. Our sales and marketing efforts are focused on payors, manufacturers, patients and physician prescribers, and are driven by dedicated managed care and physician sales teams as well as home health care consultants. Our sales and marketing strategies include the development of strong relationships with key referral sources, such as physicians, hospital discharge planners, case managers,

long-term care facilities and other healthcare professionals, primarily through regular contact with the referral sources. Contracts with Third Party Payors, including MCOs, are an integral component for sales success.

Through its PBM, BioScrip also has over 100 relationships with PBM Clients including Medicaid MCOs, employers, TPAs, workers compensation providers and discount card marketers. A range of direct sales methods are used to promote the program and add new marketing organizations.

Intellectual Property

We own and use a variety of trademarks, trade names and service marks, including “BioScrip”, “BioScripcare”, “Scripmine”, “Scrip Pharmacy”, “Adima”, “Scrip PBM”, “Infoscrip”, “MD Star”, “Critical Homecare Solutions”, “CHS Critical Homecare Solutions”, “Infusion Partners”, “Infusion Care”, “Infusion Solutions, Inc.”, “Infusion Care Systems”, “NE-HT”, "PHCS", “Wilcox Home Infusion”, “Deaconess HomeCare”, "InfuScience", "Infusal", "HomeChoice", and "HomeChoice Partners", each of which has either been registered at the state or federal level or is being used pursuant to common law rights. We are recognized in local markets by several of these trade names, but we do not consider the marks material to our business.

Competition

Infusion Services and Home Health Services

The home infusion services and home health services market is largely fragmented with local and regional companies representing the majority of the market, with competition primarily on the basis of service. Companies strive to differentiate themselves based on responsiveness to customer demands; the commitment to provide flexible, clinically-oriented services; and quality, scope and cost of clinical support programs and services. Our Centers of Excellence offer a high touch, high service approach to care on a local basis, which we believe differentiates our service.

Existing and potential competitors within the home infusion market include Option Care, Inc. (a subsidiary of Walgreen Co.), Apria Healthcare Group Inc. (which includes its subsidiary, Coram, Inc.), Critical Care Systems, Inc. and Accredo Health Group, Inc. (both subsidiaries of Express Scripts Holding Company), Omnicare, Inc., various regional providers and local providers of alternate site healthcare services such as hospitals, local home health agencies, and other local providers.

Existing and potential competitors within the home health services market include Gentiva Health Services, Inc., Almost Family, Inc., Amedisys, Inc., LHC Group, Inc. and local providers in our areas of service.

Pharmacy Benefits Management and Discount Card Services

In the Pharmacy Benefits Management (PBM) market we compete with large national PBMs and a number of smaller and regional PBMs. The large PBMs have integrated Mail Service and Specialty Pharmacy services and are very competitive with all Plan Sponsors. These national PBM companies include Express Scripts, Inc., Catamaran Corp., and CVS/Caremark Corp. In the discount card services market there are numerous competitors of various size. Generally, PBMs contract with Marketing and Sales organizations that market the cards either regionally or nationally via various sources, such as direct mail, internet, email, and sub-brokers/sales representatives.

Existing and potential competitors within the pharmacy discount card market include Catamaran Corp., ReStat Corp., Agility, Inc., CVS/Caremark Corp and local marketers across the country.

Information Technology

2012 has been a year of reorganization of our Information Technology ("IT") department. In the early part of the year, IT was reorganized to both support the divestiture of BioScrip's mail and specialty pharmacy divisions and then to scale IT operations accordingly to the continuing businesses. In mid-year, with the hiring of a new Chief Information Officer, IT department management was realigned to better position the IT organization for growth. IT investments in 2012 included, enhancements to the data-warehouse and business intelligence capabilities, significant functional expansion of our clinical portal, mybioscrip.com, and implementation of mobile devices to both sales and clinical field staff.

During 2013, we will initiate IT strategic investments in the areas of clinical workflow, data analytics and reporting via web portal(s), and tele-health device integration. In addition, restructuring will continue with the outsourcing of our IT data center hosting, management and operations.

Financial Information about Segments

Segment financial information is provided in Note 9 of the Notes to the Consolidated Financial Statements.

Government Regulation

The healthcare industry is subject to extensive regulation by a number of governmental entities at the federal, state and local level. The healthcare regulatory landscape is also subject to frequent change. Laws and regulations in the healthcare industry are extremely complex and, in many instances, the industry does not have the benefit of significant regulatory or judicial interpretation. Moreover, our business is impacted not only by those laws and regulations that are directly applicable to us but also by certain laws and regulations that are applicable to our payors, vendors and referral sources. While our management believes we are in substantial compliance with all of the existing laws and regulations applicable to us, such laws and regulations are subject to rapid change and often are uncertain in their application. As controversies continue to arise in the healthcare industry, federal and state regulation and enforcement priorities in this area may increase, the impact of which cannot be predicted. There can be no assurance that we will not be subject to scrutiny or challenge under one or more of these laws or that any such challenge would not be successful. Any such challenge, whether or not successful, could have a material adverse effect upon our business and Consolidated Financial Statements. In addition, the Patient Protection and Affordable Care Act, or PPACA, and the Health Care and Education Reconciliation Act of 2010, which amended PPACA (collectively, the "Health Reform Law"), may have a considerable impact on the financing and delivery of health care and conceivably could have a material adverse effect on our business.

Among the various federal and state laws and regulations which may govern or impact our current and planned operations are the following:

Medicare and Medicaid Reimbursement

Many of the products and services that we provide are reimbursed by Medicare and state Medicaid programs and are therefore subject to extensive government regulation. Medicare is a federally funded program that provides health insurance coverage for qualified persons age 65 or older and for some disabled persons with certain specific conditions. The Medicare Program currently consists of four parts: Medicare Part A, which covers, among other things, inpatient hospital, skilled nursing facility, home nursing and certain other types of healthcare services; Medicare Part B, which covers physicians' services, outpatient services, items and services provided by medical suppliers, and a limited number of prescription drugs; Medicare Part C, which generally allows beneficiaries to enroll in private healthcare plans (known as Medicare Advantage plans); and Medicare Part D, established by the Medicare Prescription, Drug, Improvement and Modernization Act of 2003 ("Medicare Modernization Act"), which provides for a voluntary prescription drug benefit.

The Medicaid Program provides medical benefits to groups of low-income and disabled individuals, some who may have inadequate or no medical insurance. Although the federal government establishes general guidelines for the program, Medicaid is a state administered program and each state sets its own guidelines regarding eligibility and covered services, subject to certain minimum federal requirements.

Congress often enacts legislation that affects, positively or negatively, the reimbursement rates of Medicare providers and also may impact Medicaid providers. Generally, Medicare provider payment modifications occur in the context of budget reconciliation; however, Medicare changes also may occur in the context of broader healthcare policy legislation, including the Health Reform Law. In the last several years, Congress has reduced Medicare reimbursement for various providers, including Medicare Part A certified home health agencies, and Medicare Part B suppliers.

Approximately 33% of our revenue for the year ended December 31, 2012 was derived directly from Medicare, Medicaid or other government-sponsored healthcare programs. Also, we indirectly provide services to beneficiaries of Medicare, Medicaid and other government-sponsored healthcare programs through managed care entities. Should there be material changes to federal or state reimbursement methodologies, regulations or policies, our direct reimbursements from government-sponsored healthcare programs, as well as service fees that relate indirectly to such reimbursements, could be adversely affected. In addition, certain state Medicaid programs only allow for reimbursement to pharmacies residing in the state or in a border state. While we believe we can service our current Medicaid patients through existing pharmacies, there can be no assurance that additional states will not enact in-state dispensing requirements for their Medicaid programs. To the extent such requirements are enacted, certain therapeutic pharmaceutical reimbursements could be adversely affected.

Medicare Parts B and D

We receive reimbursement for infusion therapy under both Medicare Part B and Medicare Part D. In connection with the enactment of the Medicare Modernization Act, the Centers for Medicare and Medicaid Services ("CMS") promulgated a substantial volume of new regulations implementing the federal government's Voluntary Prescription Drug Benefit Program, known as Medicare Part D. CMS has attempted to clarify issues regarding coverage of infused drugs under Medicare Part D and the relationship with existing coverage under Medicare Part B. In certain cases, both Medicare Parts B and D will cover identical infused drugs. CMS has stated that coverage is generally determined by the diagnosis and the method of drug delivery.

Under Medicare Part D, the ingredient costs and dispensing fees associated with the administration of home infusion therapies are covered. Under Medicare Part B, no separate dispensing reimbursement is available. For eligible Medicare beneficiaries, the cost of equipment and supplies associated with infused drugs covered under Medicare Part D will continue to be reimbursed on a limited basis under Medicare Part A or Part B, as applicable, and the cost of professional services associated with infused covered Medicare Part D drugs will continue to be reimbursed on a limited basis under Medicare Part A. For beneficiaries who are dually eligible for benefits under Medicare and a state Medicaid program, Medicaid covered infused drugs will be reimbursed under individual state coverage guidelines if coverage is denied by Medicare.

The U.S. Department of Health and Human Services, Office of the Inspector General (“OIG”) and CMS continue to issue guidance with regard to the Medicare Part D program and compliance with related federal laws and regulations by Part D sponsors and their subcontractors. The receipt of funds made available through this program may be subject to compliance with these new regulations, the established laws and regulations governing the federal government's payment for healthcare goods and services, and provisions in contracts with the prescription drug plans. There are many uncertainties about the financial and regulatory risks of participating in the Medicare Part D program, and these risks could negatively impact our business in future periods.

Medicare Part A

Home health agencies, including ours, are reimbursed under the Medicare program on a prospective payment system. Home health services include:

- skilled nursing care;
- physical, occupational, and speech therapy;
- medical social work;
- home health aide services; and
- hospice services.

Medicare's home health prospective payment system is comprised of a set payment for each 60-day episode of care, a case-mix adjustment based on a patient's medical condition and service needs, an outlier payment for high cost patients and a low-utilization adjustment for patients who require only a few visits. Patients are assigned to case mix resource groups based on clinical and functional status and service use.

The Health Reform Law included a number of additional changes to payment for home health care services, including the following:

- reinstatement of the 3% home health rural add-on beginning April 1, 2010 (expiring January 1, 2016);
- market basket adjustment for 2011 to be determined by CMS, offset by a 1% reduction (1% reduction to market based updates set also for 2012 and 2013); and
- revised outlier payment policy beginning in 2011.

The impact of these items overall has decreased revenue within the industry. We believe we have not been affected differently than other companies within the industry.

On November 8, 2012, CMS published the Home Health Prospective Payment System update which became effective on January 1, 2013. The update finalized the following:

- a case-mix adjustment applicable to the national standardized 60-day episode equal to 1.32%;
- a Market Basket Index equal to 2.3%; and
- a home health payment update equal to 1.3%.

Medicare Part C - Medicare Advantage

Under Medicare Part C, beneficiaries can choose to enroll with a managed care organization. Providers who serve these beneficiaries must contract with the applicable managed care organization. Reimbursement and other requirements imposed on the provider are governed by the agreement with the managed care organization rather than by statute or regulation and as such vary from plan to plan. Medicare advantage plans are permitted to cover certain services that fee-for-service Medicare does not cover. We currently have contracts with a number of Medicare advantage plans.

Legislative Changes to Medicare Reimbursement

The Medicare Modernization Act authorized a competitive bidding program for determining Medicare reimbursement rates for certain items of durable medical equipment, including enteral nutrients, supplies and equipment, and certain RT/HME products. CMS has the discretion to determine which products will be subject to competitive bidding. The first round of competitive bidding occurred in nine metropolitan areas around the country. A round one re-compete for certain product categories was also conducted, the results of which are not yet known. The second round of competitive bidding was conducted in 91 additional metropolitan statistical areas. New prices will go into effect in these areas July 1, 2013. The Health Reform Law requires that CMS institute competitive bidding or use competitive bidding prices in all areas by January 1, 2016. While there were several implementation delays, the first round became effective on January 1, 2011 and did not have a material impact on our business. It is unclear what, if any, impact the round one re-compete or the second round of bidding will have on our business. Continuing expansion of the program could have a negative impact on our revenue if we are not a successful bidder in many or all of the remaining metropolitan areas.

Legislation was introduced in the 112th Congress that would establish Medicare coverage of home infusion therapy and home infusion drugs under Medicare Part B and consolidate coverage under Medicare Part D. Medicare currently covers home infusion therapy for selected therapies primarily through the durable medical equipment benefit. However, these bills were not passed and we cannot predict whether new legislation will be introduced or passed. The Health Reform Law did not change Medicare coverage for home infusion therapy or home infusion drugs.

In the future, Congress could enact changes to Medicare reimbursement affecting home health services, including reducing the annual payment updates to below the current statutory levels, making other modifications for home health agencies in rural areas, adding beneficiary co-payments, requiring additional quality reporting or performance requirements and making broad-based changes to reimbursement for post-acute care settings (which includes nursing homes, inpatient rehabilitation facilities and long term care).

State Legislation and Other Matters Affecting Drug Prices

Some states have adopted legislation providing that a pharmacy participating in the state Medicaid program must give the state the best price that the pharmacy makes available to any third party plan ("most favored nation" legislation). Such legislation may adversely affect our ability to negotiate discounts in the future from network pharmacies. At least one state has enacted "unitary pricing" legislation, which mandates that all wholesale purchasers of drugs within the state be given access to the same discounts and incentives. Such legislation, if enacted in other states, could adversely affect our ability to negotiate discounts on our purchase of prescription drugs to be dispensed by the mail service pharmacies.

Effective September 26, 2009, First DataBank and Medi-Span agreed to reduce the mark-up factor applied to WAC, on which AWP is based, from 1.25 to 1.20 for the approximately 1,400 drug codes that were the subject of the lawsuits. These AWP publishers also similarly reduced the mark-up factor on all other national drug codes on which they had marked up AWP. This voluntary reduction affected approximately 18,000 national drug codes. First DataBank ceased publication of the AWP pricing benchmarks on September 28, 2011. As of March 5, 2013, a viable generally accepted alternative to the AWP benchmark has not been developed by the industry, and Medi-Span has announced they will continue to publish AWP until a new benchmark is widely accepted. See "Risk Factors - Risks Related to Our Business - Changes in industry pricing benchmarks could adversely affect our financial performance."

Medicaid

We are also sensitive to possible changes in state Medicaid programs as we do business with several state Medicaid programs. Budgetary concerns in many states have resulted in, and may continue to result in, reductions to Medicaid reimbursement and Medicaid eligibility as well as delays in payment of outstanding claims. Any reductions to or delays in collecting amounts

reimbursable by state Medicaid programs for our products or services, or changes in regulations governing such reimbursements, could cause our revenue and profitability to decline and increase its working capital requirements. For further discussion on state Medicaid reductions, refer to “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in Part II, Item 7.

Regulation of the Pharmacy Industry

Pharmacy Regulation

Every state's laws require our pharmacy locations in those states be licensed as an in-state pharmacy to dispense pharmaceuticals. State controlled substance laws require registration and compliance with state pharmacy licensure, registration or permit standards promulgated by the state's pharmacy licensing authority. Pharmacy and controlled substances laws often address the qualification of an applicant's personnel, the adequacy of its prescription fulfillment and inventory control practices and the adequacy of its facilities. In general, pharmacy licenses are renewed annually. We believe our pharmacy locations materially comply with all state licensing laws applicable to these businesses. If our pharmacy locations become subject to additional licensure requirements, are unable to maintain their required licenses or if states place burdensome restrictions or limitations on pharmacies, our ability to operate in some states would be limited, which could have an adverse impact on our business. We believe the impact of any such requirements would be mitigated by our ability to shift business among our numerous locations.

Many states, as well as the federal government, are considering imposing, or have already begun to impose, more stringent requirements on compounding pharmacies. (See also Food, Drug, and Cosmetic Act, below). We believe that our compounding is done in safe environments and we have clinically appropriate policies and procedures in place. We only compound pursuant to a patient specific prescription and do so in compliance with USP 797 standards. We cannot predict the impact of increased scrutiny on or regulation of compounding pharmacies.

Many of the states into which we deliver pharmaceuticals have laws and regulations that require out-of-state pharmacies to register with, or be licensed by, the boards of pharmacy or similar regulatory bodies in those states. These states generally permit the dispensing pharmacy to follow the laws of the state within which the dispensing pharmacy is located. However, various state pharmacy boards have enacted laws and/or adopted rules or regulations directed at restricting or prohibiting the operation of out-of-state pharmacies by, among other things, requiring compliance with all laws of the states into which the out-of-state pharmacy dispenses medications, whether or not those laws conflict with the laws of the state in which the pharmacy is located, or requiring the pharmacist-in-charge to be licensed in that state. To the extent that such laws or regulations are found to be applicable to our operations, we believe we comply with them. To the extent that any of the foregoing laws or regulations prohibit or restrict the operation of out-of-state pharmacies and are found to be applicable to us, they could have an adverse effect on our operations.

Laws enforced by the U.S. Drug Enforcement Administration, or DEA, as well as some similar state agencies, require each of our pharmacy locations to register with the DEA in order to handle and dispense controlled substances. A separate registration is required at each principal place of business where we dispense controlled substances. Federal and state laws also require we follow specific labeling, reporting and record-keeping requirements for controlled substances. We maintain federal and state controlled substance registrations for each of our facilities that require such registration and follow procedures intended to comply with all applicable federal and state requirements regarding controlled substances.

Many states in which we operate also require home infusion companies to be licensed as home health agencies. We believe we comply with these laws.

Professional Licensure

Nurses, pharmacists and certain other professionals employed by us are required to be individually licensed and/or certified under applicable state law. We perform criminal and other background checks on employees and are required under state licensure to ensure respective employees possess all licenses and certifications required in order to provide their relevant healthcare-related services. We believe our employees comply with applicable licensure laws.

Food, Drug and Cosmetic Act

Pharmacy operations

Certain provisions of the Federal Food, Drug and Cosmetic Act govern the preparation, handling, storage, marketing and distribution of pharmaceutical products. This law exempts many pharmaceuticals and medical devices from federal labeling and packaging requirements as long as they are not adulterated or misbranded and are dispensed in accordance with, and pursuant to, a valid prescription. The U.S. Food and Drug Administration (“FDA”) does not, however, regulate directly pharmacies or compounding pharmacies. Nevertheless, FDA will attempt to assert jurisdiction over pharmacies or compounding pharmacies which the agency believes act outside the scope of traditional pharmacy practice. In addition, the Federal Food, Drug, and Cosmetic Act governs pharmaceutical products' movement in interstate commerce. FDA has recently indicated an intention to scrutinize more closely compounding pharmacies' operations and compounded pharmaceuticals' movement in interstate commerce. While we cannot predict the future regulatory environment in which the company will operate, therefore, we believe we comply in all material respects with all applicable requirements.

Infusion services

The company's health care services offerings do not fall under the jurisdiction of FDA. However, certain medical devices (infusion pumps) essential to the company's infusion services are governed by the Federal Food, Drug, and Cosmetic Act and regulated by FDA. An infusion pump, like any medical device, is subject to failure. Since 2010, due to the relatively large number of adverse events associated with the use of infusion pumps, FDA has begun to change its approach to overseeing infusion pumps. Changes have included introducing higher levels of scrutiny, intensifying manufacturer engagement and bolstering user education / adverse event reporting. The shifting regulatory climate around infusion pumps, the requirement to maintain high levels of proficiency in using and training patients in the safe use of infusion pumps and, finally, the need to stay current in infusion pump design and “best practices” present elements of risk. Nevertheless, we believe we comply in all material respects with all applicable requirements and that our employees are adequately trained and equipped to use these devices.

Quality Standards/Accreditation

As mandated by the Medicare Modernization Act, in August 2006, CMS issued quality standards for suppliers, which are being applied by independent accredited organizations approved by CMS. As modified by The Medicare Improvements for Patients and Providers Act ("MIPPA"), all Medicare suppliers had to be accredited before October 1, 2009. We believe we have complied with this requirement.

Antitrust Laws

Numerous lawsuits have been filed throughout the United States by retail pharmacies against drug manufacturers challenging certain brand drug pricing practices under various state and federal antitrust laws. A settlement in this type of lawsuit could have an impact on pricing and discounts and could reduce or eliminate the availability to us of certain discounts, rebates and fees currently received in connection with our drug purchasing and formulary administration programs. In addition, to the extent that we or an associated business appear to have actual or potential market power in a relevant market, business arrangements and practices may be subject to heightened scrutiny from an anti-competitive perspective and possible challenge by state or federal regulators or private parties.

Regulation of the Home Health Industry

Home health agencies operate under licenses granted by the health authorities of their respective states. Home health agencies are surveyed for compliance with licensure regulation on a periodic basis, generally every 24 to 36 months. Certain states, including some in which we operate, carefully restrict new entrants into the market based on demographic and/or competitive changes. If our home health agencies become subject to new licensure requirements, are unable to maintain required licenses or if states place burdensome restrictions or limitations on home health agencies or home nursing agencies, our subsidiaries' ability to operate in some states would be limited, which could have an adverse impact on our business. We, through our subsidiaries, operate our home health business through state-licensed and Medicare certified, licensed agencies and believe we are in material compliance with all current licensure laws and regulations.

Fraud and Abuse Laws

Anti-Kickback Laws

Subject to certain statutory and regulatory exceptions (including exceptions relating to certain managed care, discount, bona fide employment arrangements, group purchasing and personal services arrangements), the federal "anti-kickback" law prohibits the knowing and willful offer or payment of any remuneration to induce the referral of an individual or the purchase, lease or order

(or the arranging for or recommending of the purchase, lease or order) of healthcare items or services paid for in whole or in part by Medicare, Medicaid or other government-funded healthcare programs (including both traditional Medicaid fee-for-service programs as well as Medicaid managed care programs). Violation of the federal anti-kickback statute could subject us to criminal and/or civil penalties including suspension or exclusion from Medicare and Medicaid programs and other government-funded healthcare programs. A number of states also have enacted anti-kickback laws that sometimes apply not only to state-sponsored healthcare programs but also to items or services that are paid for by private insurance and self-pay patients. State anti-kickback laws can vary considerably in their applicability and scope and sometimes have fewer statutory and regulatory exceptions than does the federal law. Our management carefully considers the importance of such anti-kickback laws when structuring each company's operations and believes that each of our respective companies is in compliance therewith.

The federal anti-kickback law has been interpreted broadly by courts, the OIG and other administrative bodies. Because of the broad scope of those statutes, federal regulations establish certain safe harbors from liability. Safe harbors exist for certain properly reported discounts received from vendors, certain investment interests held by a person or entity, and certain properly disclosed payments made by vendors to group purchasing organizations, as well as for other transactions or relationships. Nonetheless, a practice that does not fall within a safe harbor is not necessarily unlawful, but may be subject to scrutiny and challenge. In the absence of an applicable exception or safe harbor, a violation of the statute may occur even if only one purpose of a payment arrangement is to induce patient referrals or purchases. Among the practices that have been identified by the OIG as potentially improper under the statute are certain "product conversion" or "switching" programs in which benefits are given by drug manufacturers to pharmacists or physicians for changing a prescription (or recommending or requesting such a change) from one drug to another. Anti-kickback laws have been cited as a partial basis, along with state consumer protection laws discussed below, for investigations and multi-state settlements relating to financial incentives provided by drug manufacturers to retail pharmacies in connection with such programs.

Certain governmental entities have commenced investigations of PBM companies and other companies having dealings with the PBM industry and have identified issues concerning selection of drug formularies, therapeutic substitution programs and discounts or rebates from prescription drug manufacturers and whether best pricing requirements are being complied with. Additionally, at least one state has filed a lawsuit concerning similar issues against a health plan. Governmental entities have also commenced investigations against specialty pharmaceutical distribution companies having dealings with pharmaceutical manufacturers concerning retail distribution and sales and marketing practices of certain products and therapies. There can be no assurance that we will not receive subpoenas or be requested to produce documents in pending investigations or litigation from time to time. In addition, we may be the target or subject of one or more such investigations or named parties in corresponding actions.

We believe we are in compliance with the legal requirements imposed by the anti-kickback laws and regulations, and we believe there are material and substantial differences between drug switching programs that have been challenged under these laws and the generic substitution and therapeutic interchange practices and formulary management programs offered by us to our Plan Sponsors since no remuneration or other incentives are provided to patients, pharmacists or others. However, there can be no assurance that we will not be subject to scrutiny or challenge under such laws or regulations, or that any such challenge would not have a material adverse effect on us.

On April 18, 2003, the OIG released Compliance Program Guidance for Pharmaceutical Manufacturers (the "Guidance"), which is designed to provide voluntary, nonbinding guidance in devising effective compliance programs to assist companies that develop, manufacture, market and sell pharmaceutical products or biological products. The Guidance provides the OIG's view of the fundamental elements of a pharmaceutical manufacturer's compliance program and principles that should be considered when creating and implementing an effective compliance program, or as a benchmark for companies with existing compliance programs. While we are not a manufacturer, we believe that many aspects of it are useful to our business and therefore we currently maintain a compliance program that includes the key compliance program elements described in the Guidance. We believe the fundamental elements of our compliance programs are consistent with the principles, policies and intent of the Guidance.

The Stark Laws

The federal self-referral law, commonly known as the "Stark Law," prohibits physicians from referring Medicare patients for "designated health services" (which include, among other things, outpatient prescription drugs, durable medical equipment and supplies and home health services) to an entity with which the physician, or an immediate family member of the physician, has a direct or indirect financial relationship, unless the financial relationship is structured to meet an applicable exception. Possible penalties for violation of the Stark Law include denial of payment, refund of amounts collected in violation of the statute, civil monetary penalties and program exclusion. Our management carefully considers the Stark Law and its accompanying regulations in structuring our financial relationships with physicians and believes we are in compliance therewith.

State Self-Referral Laws

We are subject to state statutes and regulations that prohibit payments for the referral of patients and referrals by physicians to healthcare providers with whom the physicians have a financial relationship. Some state statutes and regulations apply to services reimbursed by governmental as well as private payors. Violation of these laws may result in prohibition of payment for services rendered, loss of pharmacy or health provider licenses, fines and criminal penalties. The laws and exceptions or safe harbors may vary from the federal Stark Law and vary significantly from state to state. Certain of these state statutes mirror the federal Stark Law while others may be more restrictive. The laws are often vague, and in many cases, have not been widely interpreted by courts or regulatory agencies; however, we believe we are in compliance with such laws.

Statutes Prohibiting False Claims and Fraudulent Billing Activities

A range of federal civil and criminal laws target false claims and fraudulent billing activities. One of the most significant is the federal False Claims Act, which we refer to as the False Claims Act, which imposes civil penalties for knowingly making or causing to be made false claims in order to secure a reimbursement from government-sponsored programs, such as Medicare and Medicaid. Investigations or actions commenced under the False Claims Act may be brought either by the government or by private individuals on behalf of the government, through a "whistleblower" or "qui tam" action. The False Claims Act authorizes the payment of a portion of any recovery to the individual bringing suit. Such actions are initially required to be filed under seal pending their review by the Department of Justice. If the government intervenes in the lawsuit and prevails, the whistleblower (or plaintiff filing the initial complaint) may share with the federal government in any settlement or judgment. If the government does not intervene in the lawsuit, the whistleblower plaintiff may pursue the action independently. The False Claims Act generally provides for the imposition of civil penalties and for treble damages, resulting in the possibility of substantial financial penalties for small billing errors that are replicated in a large number of claims, as each individual claim could be deemed to be a separate violation of the False Claims Act. Significantly, the Health Reform Law amended the False Claims Act to require that an overpayment must be reported and returned to the government within 60 days after an overpayment is identified. The failure to comply with this requirement now constitutes a violation of the federal False Claims Act.

Some states also have enacted statutes similar to the False Claims Act which may include criminal penalties, substantial fines, and treble damages. In recent years, federal and state governments have launched several initiatives aimed at uncovering practices that violate false claims or fraudulent billing laws. Under Section 1909 of the Social Security Act, which became effective January 1, 2007, if a state false claim act meets certain requirements as determined by the OIG in consultation with the U.S. Attorney General, the state is entitled to an increase of ten percentage points in the state medical assistance percentage with respect to any amounts recovered under a state action brought under such a law. Some of the larger states in terms of population that have had the OIG review such laws include: California, Florida, Georgia, Illinois, Michigan, New Jersey, New York, North Carolina, Texas, and Virginia. We operate in all of these states and we submit claims for Medicaid reimbursement to the respective state Medicaid agencies. We expect the list of states that enact qualifying false claims acts to continue to grow. This legislation has led to increased auditing activities by state healthcare regulators. As such, we have been the subject of an increased number of audits. Further, a number of states, including states in which we operate, have adopted their own false claims statutes as well as statutes that allow individuals to bring qui tam actions. We believe we have procedures in place to ensure the accuracy of our claims. While we believe we are in compliance with Medicaid and Medicare billing rules and requirements, there can be no assurance that regulators would agree with the methodology employed by us in billing for our products and services, and a material disagreement between us, on the one hand, and these governmental agencies, on the other hand, on the manner in which we provide products or services could have a material adverse effect on our business and Consolidated Financial Statements.

The False Claims Act also has been used by the federal government and private whistleblowers to bring enforcement actions under so-called "fraud and abuse" laws like the federal anti-kickback statute and the Stark Law. Such actions are not based on a contention that an entity has submitted claims that are facially invalid. Instead, such actions are based on the theory that when an entity submits a claim, it either expressly or impliedly certifies that it has provided the underlying services in compliance with applicable laws, and therefore that services provided and billed for during an anti-kickback statute or Stark Law violation result in false claims, even if such claims are billed accurately for appropriate and medically necessary services. The existence of the False Claims Act, which enforces alleged fraud and abuse violations, has increased the potential for such actions to be brought, and which often are costly and time-consuming to defend.

Civil Monetary Penalties Act

The Civil Monetary Penalties Act authorizes the U.S. Secretary of Health and Human Services (“HHS”) to impose civil money penalties, assessments and program supervision or exclusion for various forms of fraud and abuse involving the Medicare and Medicaid programs. Penalties range from $2,000 to $100,000 for each violation, depending on the specific misconduct

involved. The Inspector General must only prove liability by a "preponderance of the evidence" rather than the more demanding "beyond a reasonable doubt" standard required in criminal actions. A health care provider may be held liable based on its own negligence and the negligence of its employees. There is no requirement that intent to defraud must be proved. The availability of the Civil Money Penalties Act to enforce alleged fraud and abuse violations has increased the potential for such actions, which often are costly and time-consuming to defend, to be brought.

Regulation of the PBM Industry

Licensure Laws

Many states have licensure or registration laws governing certain types of ancillary healthcare organizations, including preferred provider organizations, TPAs, discount card prescription drug programs and companies that provide utilization review services. The scope of these laws differs significantly from state to state, and the application of such laws to the activities of PBMs often is unclear. We have registered or are registering under such laws in those states in which we have concluded that such registration or licensure is required.

Legislation Imposing Plan Design Mandates

Some states have enacted legislation that prohibits Plan Sponsors from implementing certain restrictions on design features, and many states have introduced legislation to regulate various aspects of managed care plans including legislation that prohibits or restricts therapeutic substitution, requires coverage of all drugs approved by the FDA, or prohibits denial of coverage for non-FDA approved uses. For example, some states provide that members may not be required to use network providers, but that they must instead be provided with benefits even if they choose to use non-network providers ("freedom of choice" legislation), or provide that a member may sue his or her health plan if care is denied. Some states have enacted, and other states have introduced, legislation regarding plan design mandates. Some states mandate coverage of certain benefits or conditions. Such legislation does not generally apply to our business, but it may apply to certain of our customers (generally, health maintenance organizations ("HMOs") and health insurers). We do not believe the widespread enactment of these regulations would have a material adverse effect on our PBM business.

Consumer Protection Laws

Most states have consumer protection laws that have been the basis for investigations and multi-state settlements relating to financial incentives provided by drug manufacturers to pharmacies in connection with drug switching programs. Consumer protection laws have also been the basis for governmental investigations and settlements relating to the improper marketing and advertising of discount medical plans. No assurance can be given that we will not be subject to scrutiny under one or more of these laws.

Comprehensive PBM Regulation

Although no state has passed legislation regulating PBM activities in a comprehensive manner, such legislation has been introduced in the past in several states. Since we do not derive significant PBM revenues from business in any particular state,we do not believe such legislation, if currently enacted in a state, would not have a material adverse impact on our operations.

Confidentiality, Privacy and HIPAA

Most of our activities involve the receipt, use and disclosure of confidential medical, pharmacy or other health-related information concerning individual members, including the disclosure of the confidential information to the member's health benefit plan. In addition, we use aggregated and blinded (anonymous) data for research and analysis purposes.

The U.S. Congress passed the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) to give people greater control over the privacy of their medical information, to help them transfer health insurance between employers, and to lower the costs involved in transmitting this information. In 2009, the Health Information for Economic and Clinical Health Act (“HITECH”), which was enacted as a part of the economic stimulus legislation, modified certain provisions of HIPAA to strengthen its privacy and security provisions.

The federal privacy regulations under HIPAA (the "Privacy Regulations") are designed to protect the medical information of a healthcare patient or health plan enrollee that could be used to identify the individual. We refer to this information as protected health information ("PHI"). Among numerous other requirements, the Privacy Regulations, as amended by HITECH: (i) limit

certain uses and disclosures of PHI; (ii) limit most disclosures of PHI to the minimum necessary for the intended purpose; (iii) require patient authorization for certain uses and disclosures of PHI; (iv) guarantee patients the right to access their medical records and to know who else has accessed them; and (v) establish requirements for breach notification.

The Privacy Regulations apply to "covered entities," which include most healthcare providers and health plans. Under HITECH, the Privacy Regulations also apply to “business associates,” which are persons or entities that perform or assist in the performance of certain activities for or on behalf of a covered entity, if the performance of the services involves the use or disclosure of a patient’s protected health information. HIPAA requires that a covered entity and its business associate enter into written contract whereby the business associate agrees to certain restrictions regarding its use and disclosure of PHI. We provide a varied line of services to patients and other entities. Depending on the purpose or function of the service line, we may be functioning as a covered entity or a business associate for purposes of complying with HIPAA and the Privacy Regulations. For example, in our role as a pharmacy and home infusion therapy service provider, we are a covered entity. In our role as a PBM, we are a business associate.

We are also subject to compliance with the federal security regulations under HIPAA (the "Security Regulations"). The Security Regulations as amended by HITECH impose substantial requirements on covered entities and their business associates regarding the storage, utilization of, access to and transmission of electronic PHI.

The requirements imposed by the Privacy Regulations, and the Security Regulations are extensive and have required substantial cost and effort to assess and implement. We have taken and will continue to take steps that we believe are reasonable to ensure our policies and procedures are in compliance with the Privacy Regulations, and the Security Standards. The requirements imposed by HIPAA have increased our burden and costs of regulatory compliance (including our health improvement programs and other information-based products), altered our reporting and reduced the amount of information we can use or disclose if patients or members do not authorize such uses or disclosures.

In addition, most states have enacted privacy and security laws that protect identifiable patient information which is not health related. Which state's laws are implicated is generally based on the state of the patient's residence. In response to concerns about identity theft, many states adopted so-called "security breach" notification laws that impose an obligation to notify persons when their personal information (e.g., social security numbers and financial information) has or may have been accessed by an unauthorized person. Further, several states have enacted pharmacy-related privacy legislation that not only applies to patient records but also prohibits the transfer or use for commercial purposes of pharmacy data that identifies prescribers. Many of these laws apply to our business and have and will continue to increase our burden and costs of privacy and security related regulatory compliance.

Healthcare Reform Legislation – The Health Reform Law

In March 2010, President Obama signed into law the Health Reform Law. The Health Reform Law will result in sweeping changes to the existing U.S. system for the delivery and financing of health care. In general, among other things, the reforms will increase the number of persons covered under government program and private insurance; furnish economic incentives for measurable improvements in health care quality outcomes; promote a more integrated health care delivery system and the creation of new health care delivery models; revise payment for health care services under the Medicare and Medicaid programs; and increase government enforcement tools and sanctions for combating fraud and abuse by health care providers. In addition, the Health Reform Law will reduce cost sharing for Medicare beneficiaries under the Part D prescription drug benefit program and provide funding for medication management services by licensed pharmacists to individuals with chronic conditions. In addition, subject to promulgation of regulations by the HHS Secretary, PBMs will be required to begin reporting to the HHS Secretary information regarding the percentage of prescriptions provided through retail as opposed to mail order pharmacies; percentage of prescriptions for which a generic drug was available and dispensed; the aggregate amount of rebates, discounts and other price concessions that the PBM negotiates and the aggregate amount of such price concessions that are passed through to the Plan Sponsor; and the aggregate amount of the difference between the amount the health benefits plan pays the PBM, and the amount the PBM pays retail and mail order pharmacies.

The details for implementation of many of the requirements under the Health Reform Law will depend on the promulgation of regulations by a number of federal government agencies, including the HHS. It is impossible to predict what many of the final requirements will be, and the net effect of those requirements on us. There is likely to be considerable uncertainty as health industry stakeholders absorb and adapt to the profound changes embodied in the Health Reform Law.

Employees

On March 5, 2013, we had 2,112 full-time, 86 part-time and 741 per diem employees. Per diem employees are defined as those available on an as-needed basis. None of our employees are represented by any union and, in our opinion, relations with our employees are satisfactory.

Available Information

We maintain a website at www.bioscrip.com. The information contained on our website is not incorporated by reference into this annual report on Form 10-K and should not be considered part of this report. We file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission ("SEC"). We make available, free of charge, through our web site our reports on Forms 10-K, 10-Q, and 8-K, and amendments to those reports, as soon as reasonably practicable after they are filed with or furnished to the SEC.

We have adopted a code of business conduct and ethics for our Company, including our directors, officers and employees. Our code of conduct policy, and the charters of the audit, compensation and nominating and corporate governance committees of our board of directors are available on our website at www.bioscrip.com.

Item 1A. ***Risk Factors***

Risks Related to Our Business

The continuing economic pressures relating to the downturn in the economy could adversely affect our business and Consolidated Financial Statements.

During economic downturns and periods of stagnant or slow economic growth, Federal and state budgets are typically negatively affected, resulting in reduced reimbursements or delayed payments by our Federal and state government health care coverage programs in which we participate, including Medicare, Medicaid and other Federal or state assistance plans. Also, a reduction in state Medicaid reimbursement rates could be imposed upon us through amendments to contracts previously negotiated with the government and could adversely affect our revenues and financial results. Government programs could also slow or temporarily suspend payments on Medicaid obligations, negatively impacting our cash flow and increase our working capital needs and interest payments. We have seen, and believe we will continue to see, Medicare and state Medicaid programs institute measures aimed at controlling spending growth, including reductions in reimbursement rates.

Higher unemployment rates and significant employment layoffs and downsizings may lead to lower numbers of patients enrolled in employer-provided plans. The adverse economic conditions could also cause employers to stop offering, or limit, healthcare coverage, or modify program designs, shifting more costs to the individual and exposing us to greater credit risk from patients or the discontinuance of drug therapy compliance.

Existing and new government legislative and regulatory action could adversely affect our business and financial results.

Our business is subject to numerous Federal, state and local laws and regulations. See "Business – Government Regulation." Changes in these regulations may require extensive changes to our systems and operations that may be difficult to implement. Untimely compliance or noncompliance with applicable laws and regulations could adversely affect the continued operation of our business, including, but not limited to: imposition of civil or criminal penalties; suspension of payments from government programs; loss of required government certifications or approvals; suspension of authorizations to participate in or exclusion from government reimbursement programs; or loss of licensure. Reduction in reimbursement by Medicare, Medicaid and other governmental payors could adversely affect our business. The regulations to which we are subject include, but are not limited to, Anti-Kickback laws; Federal and state laws prohibiting self-referrals or "Stark laws"; HIPAA; False Claims Act; Civil Monetary Penalties Act; regulations of the FDA, U.S. Federal Trade Commission, and the U.S. Drug Enforcement Administration, and regulations of various state regulatory authorities. In that regard, our business and Consolidated Financial Statements could be affected by one or more of the following:

- Federal and state laws and regulations governing the purchase, distribution, management, compounding, dispensing and reimbursement of prescription drugs and related services;
- FDA and/or state regulation affecting the pharmacy or PBM industries;

- rules and regulations issued pursuant to HIPAA and HITECH; and other federal and state laws affecting the use, disclosure and transmission of health information, such as state security breach notification laws and state laws limiting the use and disclosure of prescriber information;
- administration of Medicare and state Medicaid programs, including legislative changes and/or rulemaking and interpretation;
- state laws and regulations establishing or changing prompt payment requirements for payments to pharmacies and home health agencies;
- government regulation of the development, administration, review and updating of formularies and drug lists;
- managed care reform and plan design legislation; and
- federal or state laws governing our relationships with physicians or others in a position to refer to us.

If any of our home health agencies or pharmacies fail to comply with the conditions of participation in the Medicare program or Medicare supplier standards that home health agency or pharmacy could be suspended or disbarred from Federal healthcare programs, including Medicaid and Medicare, which could adversely affect our Consolidated Financial Statements.

Our home health agencies and pharmacies must comply with the extensive conditions of participation in the Medicare program. These conditions vary depending on the type of facility, but, in general, require our facilities to meet specified standards relating to licensure, personnel, patient rights, patient care, patient records, physical site, administrative reporting and legal compliance. If an agency or pharmacy fails to meet any of the Medicare conditions of participation or supplier standards, as applicable, that agency or pharmacy could be terminated from the Medicare program. We respond in the ordinary course to deficiency notices issued by state surveyors, and none of our pharmacies or agencies have ever been terminated from the Medicare program for failure to comply with the conditions of participation or supplier standards, as applicable. Any termination of one or more of our agencies or pharmacies from the Medicare program for failure to satisfy the Medicare conditions of participation or supplier standards, as applicable, could adversely affect our Consolidated Financial Statements.

We cannot predict the impact of any new requirements on compounding pharmacies.

Compounding pharmacies have come under increasing scrutiny from federal and state governmental agencies. We have been responding to requests for additional information on our practices as we receive them. We believe that our compounding is done in safe environments and we have clinically appropriate policies and procedures in place. We only compound pursuant to a patient specific prescription and do so in compliance with USP 797 standards. We cannot predict the impact of increased scrutiny on or regulation of compounding pharmacies.

Competition in the healthcare industry could reduce profit margins.

The healthcare industry is very competitive. Our competitors include large and well-established companies that may have greater financial, marketing and technological resources than we do. Some of our competitors are under common control with, or owned by, pharmaceutical wholesalers and distributors, managed care organizations, pharmacy benefit managers or retail pharmacy chains and may be better positioned with respect to the cost-effective distribution of pharmaceuticals. In addition, some of our competitors may have secured long-term supply or distribution arrangements for prescription pharmaceuticals necessary to treat certain chronic disease states on price terms substantially more favorable than the terms currently available to us. As a result of such advantageous pricing, we may be less price competitive than some of these competitors with respect to certain pharmaceutical products. Our competitive position could also be adversely affected by any inability to obtain access to new biotech pharmaceutical products.

Changes in the case mix of patients, as well as payor mix and payment methodologies, may have a material adverse effect on our Consolidated Financial Statements.

The sources and amounts of our patient revenue are determined by a number of factors, including the mix of patients and the rates of reimbursement among payors. Changes in the case mix of the patients, payment methodologies or payor mix among private pay, Medicare and Medicaid may significantly affect our Consolidated Financial Statements.

Changes in industry pricing benchmarks could adversely affect our financial performance.

Contracts within our business generally use certain published benchmarks to establish pricing for the reimbursement of prescription medications dispensed by us. These benchmarks include AWP, WAC and average manufacturer price. Many of our

contracts utilize the AWP benchmark. As a part of the settlement of class-action lawsuits brought against First DataBank and Medi-Span, effective September 26, 2009, both companies announced they would cease publication of the AWP pricing benchmarks at the end of 2011. First DataBank ceased publication of the AWP pricing benchmarks on September 28, 2011. Without a suitable pricing benchmark in place many of our contracts will have to be modified and could potentially change the economic structure of our agreements. As of March 5, 2013, a viable generally accepted alternative to the AWP benchmark has not been developed by the industry, and Medi-Span has announced they will continue to publish AWP until a new benchmark is widely accepted.

Competitive bidding could reduce our volumes and profitability.

The Medicare Modernization Act authorized a competitive bidding program for determining Medicare reimbursement rates for certain items of durable medical equipment, including enteral nutrients, supplies and equipment, and certain RT/HME products. CMS has the discretion to determine which products will be subject to competitive bidding. The first round of competitive bidding occurred in nine metropolitan areas around the country. The second round of competitive bidding was conducted in 91 additional metropolitan statistical areas. New prices will go into effect in these areas July 1, 2013. The Health Reform Law requires that CMS institute competitive bidding or use competitive bidding prices in all areas by January 1, 2016. While there were several implementation delays, the first round became effective on January 1, 2011 and did not have a material impact on our business. It is unclear what, if any, impact the round one re-compete or the second round of bidding will have on our business. Continuing expansion of the program could have a negative impact on our revenue if we are not a successful bidder in many or all of the remaining metropolitan areas.

PBM client demands for enhanced service levels or possible loss or unfavorable modification of contracts with clients or providers could adversely affect our Consolidated Financial Statements.

As our PBM clients face long-term, sustained increases in prescription drug costs, they may demand additional services and enhanced service levels to help mitigate the increase in spending. We operate in a very competitive environment, and we may not be able to increase our fees to compensate for these increased services, which could put pressure on our margins.

Our contracts with PBM clients generally do not have terms longer than three years and, in some cases, may be terminated by the client on relatively short notice, typically 90 days. Our PBM clients generally seek bids from other PBM or specialty providers in advance of the expiration of their contracts. If several of these clients elect not to extend their relationship with us, and we are not successful in generating sales to replace the lost business, our future business and operating results could be materially and adversely affected. In addition, we believe the managed care industry is undergoing substantial consolidation, and another party that is not our client could acquire some of our managed care clients. In such case, there is a risk of contract loss and a loss of the associated revenues and profit.

There are approximately 60,000 retail pharmacies in the United States. All major retail chain pharmacies and a vast majority of independent pharmacies participate in our pharmacy network. The top ten retail pharmacy chains represent approximately 65% of the total number of stores and over 80% of prescriptions filled in our network. Our contracts with retail pharmacies, which are non-exclusive, are generally terminable on relatively short notice. If one or more of the top pharmacy chains elects to terminate its relationship with us, our members' access to retail pharmacies and our business could be materially and adversely affected. In addition, many large pharmacy chains either own PBMs today, or could attempt to acquire a PBM in the future. Increased ownership of PBMs by retail pharmacy chains could materially and adversely affect our relationships with those pharmacy chains and, accordingly, our Consolidated Financial Statements.

Pending and future litigation could subject us to significant monetary damages and/or require us to change our business practices.

We are subject to risks relating to litigation and other proceedings in connection with our operations, including the dispensing of pharmaceutical products. See Item 3 – Legal Proceedings for a list of material proceedings pending against us. While we believe that these suits are without merit and intend to contest them vigorously, we can give no assurance that an adverse outcome in one or more of these suits would not have a material adverse effect on our consolidated results of operations, consolidated financial position and/or consolidated cash flow from operations, or would not require us to make material changes to our business practices. We periodically respond to subpoenas and requests for information from governmental agencies. We confirm that we are not a target or a potential subject of a criminal investigation. We cannot predict with certainty what the outcome of any of the foregoing might be or whether we may in the future become a target or potential target of an investigation or the subject of further inquiries or ultimately settlements with respect to the subject matter of these subpoenas. In addition to potential monetary liability arising from these suits and proceedings, from time to time we incur costs in providing documents to government agencies. Current

pending claims and associated costs may be covered by our insurance, but certain other costs are not insured. There can be no assurance that such costs will not increase and/or continue to be material to the Company's performance in the future.

In addition, as we continue our strategic assessment and cost reduction efforts, there is an increased risk of employment and workers compensation-related litigation and/or administrative claim brought against us. We would defend against any and all such litigation and claims, as appropriate. We do not believe that any one or more such employment and workers compensation related litigation and claims would have a material adverse effect upon us and our Consolidated Financial Statements; however, there can be no assurance that there would not be a material adverse effect on our Consolidated Financial Statements in any particular reporting period.

We may be subject to liability claims for damages and other expenses that are not covered by insurance.

A successful product or professional liability claim in excess of our insurance coverage could harm our Consolidated Financial Statements. Various aspects of our business may subject us to litigation and liability for damages. For example, a prescription drug dispensing error could result in a patient receiving the wrong or incorrect amount of medication, leading to personal injury or death. Our business and Consolidated Financial Statements could suffer if we pay damages or defense costs in connection with a claim that is outside the scope of any applicable contractual indemnity or insurance coverage.

Loss of relationships with one or more pharmaceutical manufacturers and changes in discounts provided by pharmaceutical manufacturers could adversely affect our business and financial results.

We have contractual relationships with pharmaceutical manufacturers that provide discounts on certain drugs dispensed from our pharmacies, and pay service fees for other programs and services that we provide. Our business and financial results could be adversely affected if: (i) we were to lose relationships with one or more key pharmaceutical manufacturers; (ii) discounts decline due to changes in available discounts and/or utilization of specified pharmaceutical products by Plan Sponsors and other clients; (iii) legal restrictions are imposed on the ability of pharmaceutical manufacturers to offer rebates, administrative fees or other discounts or to purchase our programs or services; or (iv) pharmaceutical manufacturers choose not to offer rebates, administrative fees or other discounts or to purchase our programs or services.

We purchase a majority of our pharmaceutical products from one vendor and a disruption in our purchasing arrangements could adversely impact our business.

We purchase a majority of our prescription products, subject to certain minimum periodic purchase levels and excluding purchases of therapeutic plasma products, from a single wholesaler, ABDC, pursuant to a prime vendor agreement. The term of this agreement extends until December 2015, subject to extension for up to two additional years. Any significant disruption in our relationship with ABDC, or in ABDC's supply and timely delivery of products to us, would make it difficult and possibly more costly for us to continue to operate our business until we are able to execute a replacement wholesaler agreement. There can be no assurance that we would be able to find a replacement wholesaler on a timely basis or that such wholesaler would be able to fulfill our demands on similar financial terms and service levels. If we are unable to identify a replacement on substantially similar financial terms and/or service levels, our Consolidated Financial Statements may be materially and adversely affected.

A disruption in supply could adversely impact our business

We also source pharmaceuticals, medical supplies and equipment from other manufacturers, distributors and wholesalers. Most of the pharmaceuticals that we purchase are available from multiple sources, and we believe they are available in sufficient quantities to meet our needs and the needs of our patients. We keep safety stock to ensure continuity of service for reasonable, but limited, periods of time. Should a supply disruption result in the inability to obtain especially high margin drugs and compound components, our Consolidated Financial Statements could be negatively impacted.

Acts of God such as major weather disturbances could disrupt our business

We operate in a network of prescribers, providers, patients, and facilities that can be negatively impacted by local weather disturbances and other force majeure events. For example,in anticipation of major weather events, patients with impaired health may be moved to alternate sites. After a major weather event, availability of electricity, clean water and transportation can impact our ability to provide service in the home. In addition, acts of God and other force majeure events may cause a reduction in our business or increased costs, such as increased costs in our operations as we incur overtime charges or redirect services to other locations, delays in our ability to work with payors, hospitals, physicians and other strategic partners on new business initiatives, and disruption to referral patterns as patients are moved out of facilities affected by such events or are unable to return to sites of service in the home.

Failure to develop new services may adversely affect our business.

We operate in a highly competitive environment. We develop new services from time to time to assist our clients. If we are unsuccessful in developing innovative services, our ability to attract new clients and retain existing clients may suffer.

Technology is also an important component of our business as we continue to utilize new and better channels to communicate and interact with our clients, members and business partners. If our competitors are more successful than us in employing this technology, our ability to attract new clients, retain existing clients and operate efficiently may suffer.

The success of our business depends on maintaining a well-secured business and technology infrastructure.

We are dependent on our infrastructure, including our information systems, for many aspects of our business operations. A fundamental requirement for our business is the secure storage and transmission of personal health information and other confidential data. Our business and operations may be harmed if we do not maintain our business processes and information systems in a secure manner, and maintain and improve continually the integrity of our confidential information. Although we have developed systems and processes that are designed to protect information against security breaches, failure to protect such information or mitigate any such breaches may adversely affect our operating results. Malfunctions in our business processes, breaches of our information systems or the failure to maintain effective and up-to-date information systems could disrupt our business operations, result in customer and member disputes, damage our reputation, expose us to risk of loss or litigation, result in regulatory violations, increase administrative expenses or lead to other adverse consequences.

Our business is dependent on the services provided by third party information technology vendors.

Our information technology infrastructure includes hosting services provided by third parties. While we believe these third parties are secure, high-performing organizations with customary certifications, they could suffer business interruption which in term could impact our operations negatively.

Our failure to maintain controls and processes over billing and collecting could have a significant negative impact on our Consolidated Financial Statements.

The collection of accounts receivable is a significant challenge, and requires constant focus and involvement by management and ongoing enhancements to information systems and billing center operating procedures. If we are unable to properly bill and collect our accounts receivable, our results could be materially and adversely affected. While management believes that controls and processes are satisfactory, there can be no assurance that accounts receivable collectability will remain at current levels.

The Health Reform Law and its implementation could have a material adverse effect on our business.

The Health Reform Law will result in sweeping changes to the existing U.S. system for the delivery and financing of health care. The details for implementation of many of the requirements under the Health Reform Law will depend on the promulgation of regulations by a number of federal government agencies, including the HHS. It is impossible to predict the outcome of these changes, what many of the final requirements of the Health Reform Law will be, and the net effect of those requirements on us. As such, we cannot predict the impact of the Health Reform Law on our business, operations or financial performance.

Prescription volumes may decline, and our net revenues and profitability may be negatively impacted, when products are withdrawn from the market or when increased safety risk profiles of specific drugs result in utilization decreases.

We dispense significant volumes of prescription medications from our pharmacies. Our dispensing volume is the principle driver of revenue and profitability. When products are withdrawn by manufacturers, or when increased safety risk profiles of specific drugs or classes of drugs result in utilization decreases, physicians may cease writing or reduce the numbers of prescriptions written for these higher-risk drugs. Additionally, negative media reports regarding drugs with higher safety risk profiles may result in reduced consumer demand for such drugs. In cases where there are no acceptable prescription drug equivalents or alternatives for these prescription drugs, our prescription volumes, net revenues, profitability and cash flows may decline.

The loss of a relationship with one or more Third Party Payors or Plan Sponsors could negatively impact our business.

Where we do not have preferred or exclusive arrangements with Plan Sponsors, our contracts for reimbursement with Plan Sponsors are often on a perpetual or “evergreen” basis. These evergreen contracts are subject to termination by a Plan Sponsor’s written notice. The required notice varies by contract and is typically 30 to 90 days. Depending on the amount of revenues

generated by any single Plan Sponsor or more than one Plan Sponsor in the aggregate, one or more terminations could have a material and adverse effect on our Consolidated Financial Statements. As of the date of this filing, we are unaware of any intention by one or more Plan Sponsors to terminate or not renew agreement(s) with us such that we would experience a material and adverse effect on our Consolidated Financial Statements.

Home infusion joint ventures formed with hospitals could adversely affect our financial results.

The home infusion industry is currently seeing renewed activity in the formation of equity-based infusion joint ventures formed with hospitals. This activity stems, in part, from hospitals seeking to position themselves for new paradigms in the delivery of coordinated healthcare and new methods of payment, including an emerging interdisciplinary care model forming what is being labeled an accountable care organization (ACO). These organizations are encouraged by the new Health Reform Law. These entities are being designed in order to save money and improve quality of care by better integrating care, with the healthcare provider possibly sharing in the financial benefits of the new efficiencies.

Participation in equity-based joint ventures offer hospitals and other providers an opportunity to more efficiently transfer patients to less expensive care settings, while keeping the patient within its network. Additionally, it provides many hospitals with a mechanism to invest accumulated profits in a growing sector with attractive margins.

If these home infusion joint ventures continue to expand and we lose referrals as a result, our Consolidated Financial Statements could be adversely affected.

Network lock-outs by health insurers and PBMs could adversely affect our financial results.

Many Plan Sponsors and PBMs continue to create exclusive pharmacy networks which limit a member's access to a mail service facility or network of preferred pharmacies. To the extent our pharmacies are excluded from these networks, we are unable to dispense medications to those members and bill for prescriptions to those member's insurance carriers. If these specialty networks continue to expand and we are locked out from dispensing infusion medications to members of exclusive networks, our Consolidated Financial Statements could be adversely affected.

A shortage of qualified registered nursing staff, pharmacists and other professionals could adversely affect our ability to attract, train and retrain qualified personnel and could increase operating costs.

Our business relies significantly on its ability to attract and retain nursing staff, pharmacists and other professionals who possess the skills, experience and licenses necessary to meet the requirements of their job responsibilities. From time to time and particularly in recent years, there have been shortages of nursing staff, pharmacists and other professionals in certain local and regional markets. As such, we are often required to compete for personnel with other healthcare systems and our competitors. Our ability to attract and retain personnel depends on several factors, including our ability to provide them with engaging assignments and competitive benefits and salaries. There can be no assurance that we will be successful in any of these areas.

In addition, where labor shortages arise in markets in which we operate, we may face higher costs to attract personnel, and we may have to provide them with more attractive benefit packages than originally anticipated or are being paid in other markets where such shortages don't exist at the time. In either case, such circumstances could cause our profitability to decline. Finally, if we expand our operations into geographic areas where healthcare providers historically have unionized or unionization occurs in our existing geographic areas, we cannot provide assurance that negotiating collective bargaining agreements will not have a negative effect on our ability to timely and successfully recruit qualified personnel and on our financial results. If we are unable to attract and retain nursing staff, pharmacists and other professionals, the quality of our services may decline and we could lose patients and referral sources.

Introduction of new drugs or accelerated adoption of existing lower margin drugs could cause us to experience lower revenues and profitability when prescribers prescribe these drugs for their patients or they are mandated by Plan Sponsors.

The pharmaceutical industry pipeline of new drugs includes many drugs that over the long term, may replace older, more expensive therapies, as a result of such drugs going off patent and being replaced by generic substitutes, new and less expensive delivery methods (such as when an infusion or injectable drug is replaced with an oral drug) or additional products are added to a therapeutic class, thereby increasing price competition among competing manufacturer's products in that therapeutic category. In such cases, manufacturers have the ability to increase drug acquisition costs or lower the selling price of replaced products. This could have the effect of lowering our revenues and/or margins.

The loss of a relationship with one or more of our discount card brokers could negatively impact our business.

We contract with over 80 marketing companies that provide pharmacy discount cards to the uninsured and underinsured. Depending on the amount of revenue generated by any broker agreement, one or more terminations could have a material and adverse effect on our Consolidated Financial Statements. The brokers we use are typically small, privately held marketing companies. The two largest brokers generate a significant percentage of the discount card business. We are unaware of any intention by a significant discount card broker to terminate or not renew an agreement with us.

Financial difficulties at our third party processor of discount card claims could negatively impact our business.

Our contract with a third party PBM to process discount card transactions allows for the timely collections of discount card claims against the third party processor's network pharmacy claims population. While this can improve claim collection, it also concentrates our credit risk with the third party processor. Should our third party processor experience financial difficulties or declare bankruptcy, we could suffer increased bad debt expense and reduced operating profit.

Increases in costs to fulfill discount card claims could reduce our profitability

The discount card portion of our PBM business relies on participating network pharmacies to fulfill drug prescriptions and reimburse us for the utilization of the card. Our fees are based on negotiated rates with the pharmacies. Should these fees decrease, operating profit will be reduced.

Subject to certain limitations, the former CHS stockholders and certain former option holders of CHS may sell our common stock, which could cause our stock price to decline.

The shares of our common stock that the former CHS stockholders and certain former option holders of CHS received in connection with the merger with CHS are restricted, but such former CHS stockholders and former option holders may sell the shares of our common stock under certain circumstances, including in compliance with Rule 144 promulgated under the Securities Act of 1933, as amended. We have entered into a stockholders' agreement with the former CHS stockholders and certain former option holders of CHS, pursuant to which we have agreed to register their shares of our common stock with the SEC in order to facilitate sales of those shares. The sale of a substantial number of our shares by such parties or our other stockholders within a short period of time could cause our stock price to decline, making it more difficult for us to raise funds through future offerings of our common stock or acquire other businesses using our common stock as consideration.

Our ability to use net operating loss carryforwards to offset future taxable income for U.S. federal tax purposes is subject to limitation, and our issuance of common stock in the CHS merger increased the risk that we could experience an "ownership change" in the future that could further limit our ability to utilize our net operating losses.

Under U.S. federal income tax law, a corporation's ability to utilize its net operating losses, or NOLs, to offset future taxable income may be significantly limited if it experiences an "ownership change" as defined in Section 382 of the Internal Revenue Code of 1986, as amended, which we refer to as the Code. In general, an ownership change will occur if there is a cumulative change in a corporation's ownership by "5-percent shareholders" that exceeds 50 percentage points over a rolling three-year period. A corporation that experiences an ownership change will generally be subject to an annual limitation on its pre-ownership change NOLs equal to the value of the corporation immediately before the ownership change, multiplied by the long-term tax-exempt rate (subject to certain adjustments). The annual limitation for a taxable year generally is increased by the amount of any "recognized built-in gains" for such year and the amount of any unused annual limitation in a prior year.

As of December 31, 2012, we had NOLs for U.S. federal income tax purposes of approximately $49.6 million. Approximately $26.6 million of these NOLs were acquired in the InfuScience, Inc. acquisition in 2012 and are subject to an annual limitation under Section 382 of the Code.

We did not experience an ownership change upon the issuance of common stock in the CHS merger in 2010. However, the issuance of common stock in the merger, together with other issuances of common stock during the applicable three-year period, could cause us to experience an ownership change under Section 382 of the Code. As a result, the issuance of our common stock in the merger increased the risk that we could experience an ownership change during the three-year period following the merger, which could further limit our ability to utilize our NOLs.

Federal actions may reduce reimbursement rates from governmental payors and adversely affect our results of operations.

In August 2011, the Budget Control Act of 2011 was enacted into law to increase the federal debt ceiling. The law included spending cuts of nearly $1 trillion over the next 10 years. The law further created a Congressional committee that was given a

deadline of November 23, 2011 to develop recommendations for further reducing the federal deficit by another $1.2 trillion over 10 years. The committee was unable to agree on a plan by the November deadline, and as a result, automatic spending cuts were triggered. In January 2013, the American Taxpayer Relief Act of 2012 was enacted to address a number of events commonly known as the "fiscal cliff." As a result of this legislation, automatic Medicare spending cuts (and resultant reductions in reimbursement) were delayed by two (2) months. Congress did not act to change or delay the automatic spending cuts by March 1, 2013, so they are now in effect. Unless Congress takes additional action, Medicare reimbursement to providers will be reduced overall by 2% beginning April 1, 2013. The automatic spending cuts do not have an impact on Medicaid reimbursement. The reductions in Medicare reimbursement could have an adverse effect on our results of operations, although the impact cannot yet be predicted. There may also be other impacts from the automatic spending reductions that we cannot predict. For example, staff at CMS and Medicare administrative contractors may be reduced which could result in delays in claims processing.

We may face liabilities and expect to incur significant costs relating to our business, and the Pharmacy Services Asset Sale.

We are still subject to potential liabilities relating to historical business operations that were subject to the Pharmacy Services Asset Sale. Under the terms of the Pharmacy Services Asset Sale, we retained and are responsible for most historical liabilities of the operations subject to the Pharmacy Services Asset Sale. In addition, we are obligated to indemnify the Buyers against certain potential liabilities and for breaches of representations, warranties and covenants under the Asset Purchase Agreement. We may also be subject to claims by, and liabilities to, various stakeholders or other parties, including counterparties, regulatory authorities and employees, resulting from the conduct of the operations subject to the Pharmacy Services Asset Sale prior to the consummation of the Pharmacy Services Asset Sale.

Acquisitions, strategic investments and strategic relationships involve certain risks.

We intend to pursue opportunistic strategic acquisitions of, or investments in, businesses and technologies. Acquisitions may entail numerous risks, including difficulties in assessing values for acquired businesses, intangible assets and technologies, difficulties in the assimilation of acquired operations and products, diversion of management's attention from other business concerns, assumption of unknown material liabilities of acquired companies, amortization of acquired intangible assets which could reduce future reported earnings, and potential loss of clients or key employees of acquired companies. We may not be able to successfully fully integrate the operations, personnel, services or products that we have acquired or may acquire in the future. Strategic investments may also entail some of the risks described above. If these investments are unsuccessful, we may need to incur charges against earnings. We may also pursue a number of strategic relationships. These relationships and others we may enter into in the future may be important to our business and growth prospects. We may not be able to maintain these relationships or develop new strategic alliances.

There can be no assurance that we will be able to identify suitable acquisition candidates or business and investment opportunities.

We intend to continue to explore strategic alternatives and identify new business acquisition opportunities. There is no assurance that we will be able to identify such new business acquisition opportunities or strategic alternatives to continue to execute our strategy.

We may incur significant costs in connection with our evaluation of new business opportunities and suitable acquisition candidates.

Our management intends to identify, analyze and evaluate potential new business opportunities, including possible acquisition and merger candidates. We may incur significant costs, such as due diligence and legal and other professional fees and expenses, as part of these efforts. Notwithstanding these efforts and expenditures, we cannot give any assurance that we will identify an appropriate new business opportunity, or any acquisition opportunity, in the near term, or at all.

Infusion expansion involves certain regulatory risks.

The Company is expanding its infusion presence which may expose the Company to regulatory and governmental risks. The infusion services industry in many states is heavily regulated. The varying compliance requirements of these different regulatory jurisdictions and other factors may limit our ability to successfully conduct or expand our business. Additionally, the expansion into new locations involves substantial operational and execution risk. We may not be able to manage these risks effectively.

Risks Related to Indebtedness

The significant indebtedness incurred to complete the CHS acquisition imposed operating and financial restrictions on us which, together with the resulting debt service obligations, may significantly limit our ability to execute our business strategy and increase the risk of default under our debt obligations.

We issued $225 million of senior unsecured notes (“Senior Unsecured Notes”) and entered into a credit agreement to finance the acquisition of CHS. In late 2010, we refinanced and entered into an amended and restated credit agreement which resulted in a $150.0 million revolving facility ("Revolving Credit Facility"), which was further amended to reduce the revolving commitment from $150.0 million to $125.0 million. The terms of the Revolving Credit Facility require us to comply with certain financial covenants, including a minimum fixed charge coverage ratio, minimum liquidity levels and maximum accounts receivable turnover levels. In addition, subject to a number of important exceptions, the indenture governing the Senior Unsecured Notes and the Revolving Credit Facility contains certain restrictions on our ability to, among other things:

- incur or guarantee additional indebtedness or issue certain preferred stock;
- transfer or sell assets;
- make certain investments;
- pay dividends or distributions, redeem subordinated indebtedness, or make other restricted payments;
- create or incur liens;
- incur dividend or other payment restrictions affecting certain subsidiaries;
- issue capital stock of our subsidiaries;
- consummate a merger, consolidation or sale of all or substantially all of our assets; and
- enter into transactions with affiliates.

Consequently, the restrictions contained in the indenture governing the Senior Unsecured Notes and the Revolving Credit Facility may prevent us from taking actions that we believe would be in the best interest of our business, and may make it difficult for us to successfully execute our business strategy or effectively compete with companies that are not similarly restricted. Additionally, the terms of the Revolving Credit Facility require us to comply with certain financial covenants, including a minimum fixed charge coverage ratio, minimum liquidity levels and maximum accounts receivable turnover levels. We cannot assure you that we will meet those tests or that the lenders under the Revolving Credit Facility will waive any failure to meet those tests.

A breach of any of these covenants or the inability to comply with the required financial ratios could result in a default under the Revolving Credit Facility or the indenture governing the Senior Unsecured Notes, as applicable. If any such default occurs, the lenders under the Revolving Credit Facility and the holders of the Senior Unsecured Notes may elect to declare all of their respective outstanding debt, together with accrued interest and other amounts payable thereunder, to be immediately due and payable. The lenders under the Revolving Credit Facility also have the right in these circumstances to terminate any commitments they have to provide further borrowings. If we were unable to pay such amounts, the lenders under the Revolving Credit Facility could proceed against the collateral pledged to them. We have pledged a substantial portion of our assets to the lenders under the Revolving Credit Facility.

In addition, the degree to which we may be leveraged as a result of the indebtedness incurred in connection with the merger or otherwise could:

- materially and adversely affect our ability to obtain additional financing for working capital, capital expenditures, acquisitions, debt service requirements or other purposes;
- make us more vulnerable to general adverse economic, regulatory and industry conditions;
- limit our flexibility in planning for, or reacting to, changes and opportunities in the markets in which we compete;
- place us at a competitive disadvantage compared to our competitors that have less debt or could require us to dedicate a substantial portion of our cash flow to service our debt;
- reduce the funds available to us for operations and other purposes;
- limit our ability to fund the repurchase of the Senior Unsecured Notes upon a change of control; or
- restrict us from making strategic acquisitions or exploiting other business opportunities.

Our Senior Unsecured Notes are not secured by our assets or those of our guarantor subsidiaries.

Our Senior Unsecured Notes and the related guarantees are our, and our guarantor subsidiaries’, general unsecured obligations and are effectively subordinated in right of payment to all of our and our guarantor subsidiaries’ secured indebtedness and obligations, including all indebtedness under the Revolving Credit Facility. If we become insolvent or are liquidated, or if payment under any of the instruments governing our secured debt is accelerated, the lenders under those instruments will be entitled to

exercise the remedies available to a secured lender under applicable law and pursuant to the instruments governing such debt. Accordingly, our secured indebtedness and obligations, including all indebtedness under the Revolving Credit Facility, is senior to the Senior Unsecured Notes to the extent of the value of the excess collateral securing that indebtedness. In that event, because the Senior Unsecured Notes and the guarantees will not be secured by any of our assets, it is possible that our remaining assets might be insufficient to satisfy claims of holders of the Senior Unsecured Notes in full or at all.

As of December 31, 2012, we had no principal amount of secured indebtedness outstanding under the Revolving Credit Facility. Under the terms of our prime vendor agreement with our primary drug wholesaler, we granted our primary drug wholesaler a secured second lien in all of our inventory accounts and proceeds and products thereto and thereof. Any additional borrowings pursuant to the Revolving Credit Facility would be secured indebtedness, if incurred. Although the indenture governing the Senior Unsecured Notes contains limitations on the amount of additional indebtedness that we may incur, under certain circumstances the amount of such indebtedness could be substantial and, under certain circumstances, such indebtedness may be secured indebtedness and senior in right of payment to the Senior Unsecured Notes.

Despite our substantial indebtedness, we may still incur significantly more debt. This could exacerbate the risks associated with our substantial leverage.

We may incur substantial additional indebtedness, including additional secured indebtedness, in the future, including in connection with future acquisitions, strategic investments and strategic relationships. Although the indenture governing the Senior Unsecured Notes and the Revolving Credit Facility contain restrictions on the incurrence of additional debt, these restrictions are subject to a number of qualifications and exceptions and, under certain circumstances, debt incurred in compliance with these restrictions, including secured debt, could be substantial. The Revolving Credit Facility permits, among other things, revolving credit borrowings of up to $125.0 million. Adding additional debt to current debt levels could exacerbate the leverage-related risks described above.

To service our indebtedness and other obligations, we will require a significant amount of cash. Our ability to generate cash depends on many factors beyond our control.

Our ability to make payments on and to refinance our indebtedness, including the Senior Unsecured Notes, and to fund working capital needs and planned capital expenditures will depend on our ability to generate cash in the future. A significant reduction in our operating cash flows resulting from changes in economic conditions, increased competition or other events beyond our control could increase the need for additional or alternative sources of liquidity and could have a material adverse effect on our business, Consolidated Financial Statements, prospects and our ability to service our debt and other obligations.

We cannot assure you that our business will generate sufficient cash flows from operations or that future borrowings will be available to us under the Revolving Credit Facility or otherwise in an amount sufficient to enable us to pay our indebtedness, including our indebtedness under the Revolving Credit Facility and the Senior Unsecured Notes, or to fund our other liquidity needs. We may need to refinance all or a portion of our indebtedness, including the Senior Unsecured Notes, on or before the maturity of the debt. We cannot assure you that we will be able to refinance any of our indebtedness on commercially reasonable terms or at all.

We may not be able to satisfy our obligations to holders of the Senior Unsecured Notes upon a change of control or asset sale.

Upon the occurrence of a change of control (as defined in the indenture governing the Senior Unsecured Notes), holders of the Senior Unsecured Notes will have the right to require us to purchase the Senior Unsecured Notes at a price equal to 101% of the principal amount of such Senior Unsecured Notes, plus any accrued and unpaid interest to the date of purchase.

In addition, upon the occurrence of a certain asset sale, holders of the Senior Unsecured Notes may, under certain circumstances, have the right to require us to purchase a portion of the Senior Unsecured Notes at a price equal to 100% of the principal amount of such Senior Unsecured Notes, plus any accrued and unpaid interest to the date of purchase.

In addition, upon the occurrence of such asset sale, the net proceeds generated from the sale may be used for certain specified purposes within 360 days of receipt, including to repay indebtedness under our Revolving Credit Facility and correspondingly reduce commitments under the facility, to acquire the capital stock or substantially all of the assets of a business that will become a restricted subsidiary of the Company, to make capital expenditures, and to acquire long-term assets that are useful for the operation of the Company's business. If net proceeds exceeding $15 million remain after 360 days following receipt of the proceeds of such an asset sale, we will be required to offer to purchase the maximum principal amount of the Senior Unsecured Notes that may be purchased with such excess proceeds, at a price equal to 100% of the principal amount of such Senior Unsecured Notes, plus

any accrued and unpaid interest to the date of purchase. Thereafter, any proceeds remaining from such an asset sale and not used to purchase Senior Unsecured Notes may be used for any appropriate business purpose without restriction. Because the net proceeds received from the Pharmacy Services Asset Sale have been reinvested in accordance with the indenture governing the Senior Unsecured Notes, we will not be required to offer to purchase any Senior Unsecured Notes as a result of that sale.

If a change of control offer or asset sale offer is made, we may not have available funds sufficient to pay the change of control purchase price or asset sale purchase price for any or all of the Senior Unsecured Notes that might be delivered by holders of the Senior Unsecured Notes seeking to exercise the change of control put right or asset sale put right. If we are required to purchase Senior Unsecured Notes pursuant to a change of control offer or asset sale offer, we would be required to seek third-party financing to the extent we do not have available funds to meet our purchase obligations. There can be no assurance that we will be able to obtain such financing on acceptable terms to us or at all. Accordingly, none of the holders of the Senior Unsecured Notes may receive the change of control purchase price or asset sale purchase price for their Senior Unsecured Notes. Our failure to make or consummate the change of control offer or asset sale offer, or to pay the change of control purchase price or asset sale purchase price when due, will give the holders of the Senior Unsecured Notes the rights described in “Description of Notes — Events of Default and Remedies”, which is in the Company’s Form S-4 filed with the SEC on June 22, 2010.

In addition, the events that constitute a change of control or asset sale under the indenture governing the Senior Unsecured Notes may also be events of default under the Revolving Credit Facility. These events may permit the lenders under the Revolving Credit Facility to accelerate the debt outstanding there-under and, if such debt is not paid, to enforce security interests in our specified assets, thereby limiting our ability to raise cash to purchase the Senior Unsecured Notes and reducing the practical benefit of the offer-to-purchase provisions to the holders of the Senior Unsecured Notes.

A subsidiary guarantee could be voided if it constitutes a fraudulent transfer under U.S. bankruptcy or similar state law, which would prevent the holders of the Senior Unsecured Notes from relying on that subsidiary to satisfy claims.

The Senior Unsecured Notes are guaranteed by our domestic restricted subsidiaries. The guarantees may be subject to review under U.S. federal bankruptcy law and comparable provisions of state fraudulent conveyance laws if a bankruptcy or another similar case or lawsuit is commenced by or on behalf of our or a guarantor subsidiary’s unpaid creditors or another authorized party. Under these laws, if a court were to find that, at the time any guarantor subsidiary issued a guarantee of the Senior Unsecured Notes, either it issued the guarantee to delay, hinder or defraud present or future creditors or it received less than reasonably equivalent value or fair consideration for issuing the guarantee and at the time:

- it was insolvent or rendered insolvent by reason of issuing the guarantee;
- it was engaged, or about to engage, in a business or transaction for which its remaining unencumbered assets constituted unreasonably small capital to carry on its business;
- it intended to incur, or believed that it would incur, debts beyond its ability to pay as they mature; or
- it was a defendant in an action for money damages, or had a judgment for money damages docketed against it if, in either case, after final judgment, the judgment is unsatisfied, then the court could void the obligations under the guarantee, subordinate the guarantee of the Senior Unsecured Notes to other debt or take other action detrimental to holders of the Senior Unsecured Notes.

We cannot be sure as to the standard that a court would use to determine whether a guarantor subsidiary was solvent at the relevant time, or, regardless of the standard that the court uses, that the issuance of the guarantees would not be voided or that the guarantees would not be subordinated to other debt. If such a case were to occur, the guarantee could also be subject to the claim that, since the guarantee was incurred for our benefit, and only indirectly for the benefit of the guarantor subsidiary, the obligations of the applicable guarantor subsidiary were incurred for less than fair consideration. A court could thus void the obligations under the guarantee, subordinate the guarantee to the applicable guarantor subsidiary’s other debt or take other action detrimental to holders of the Senior Unsecured Notes. If a court were to void a guarantee, holders of the Senior Unsecured Notes would no longer have a claim against the guarantor subsidiary. Sufficient funds to repay the Senior Unsecured Notes may not be available from other sources, including the remaining guarantor subsidiaries, if any. In addition, the court might direct the holder of the Senior Unsecured Notes to repay any amounts already received from or are attributable to the guarantor subsidiary.

Each subsidiary guarantee contains a provision intended to limit the guarantor subsidiary’s liability to the maximum amount that it could incur without causing the incurrence of obligations under its subsidiary guarantee to be a fraudulent transfer. This provision may not be effective to protect the subsidiary guarantees from being voided under fraudulent transfer law.

Our subsidiary guarantors may be unable to fulfill their obligations under their guarantees.

The ability of our subsidiary guarantors to make any required payments under their guarantees depends on our future operating performance, which will be affected by financial, business, economic, and other factors, many of which we cannot control. Such subsidiaries' businesses may not generate sufficient cash flow from operations in the future and their anticipated growth in revenue and cash flow may not be realized, either or both of which could result in their being unable to honor their guarantees or to fund other liquidity needs. If such subsidiaries do not have enough money, they may be required to refinance all or part of their then-existing debt, sell assets, or borrow more money. They may not be able to accomplish any of these alternatives on terms acceptable to them, or at all. In addition, the terms of existing or future debt agreements, including the Revolving Credit Facility and the indenture governing the Senior Unsecured Notes, may restrict such subsidiaries from adopting any of these alternatives. The failure of our subsidiaries to generate sufficient cash flow or to achieve any of these alternatives could materially and adversely affect the value of the Senior Unsecured Notes and the ability of such subsidiaries to pay the amounts due under their guarantees, if any.

Risks Related to the Pharmacy Services Asset Sale

A portion of the purchase price received from the Pharmacy Services Asset Sale is "at risk".

Pursuant to the terms of the asset purchase agreement, as amended, entered into in connection with the Pharmacy Services Asset Sale, Walgreen Co. may be entitled to up to approximately $6.4 million of the purchase price received by the Company in connection with the Pharmacy Services Asset Sale to the extent certain store net revenue during the trailing twelve month period ending on June 30, 2013 (the "measurement period" for any of the five Florida locations owned by the Company prior to the Pharmacy Services Asset Sale is less than specified amounts (based generally on historical net revenues of the respective store location), calculable on a store-by-store basis based on the amount of displaced store net revenue at such store. Generation of such revenue by each such store during the measurement period is not in the Company's control and, therefore, there is no guarantee that the Company will not have to return all or a portion of the "at risk" purchase price to Walgreen.

Item 1B. ***Unresolved Staff Comments***

None.

Item 2. ***Properties***

Our executive offices are located in Elmsford, New York, and we maintain a corporate office in Eden Prairie, Minnesota. We currently lease all of our properties from third parties under various lease terms expiring over periods extending through 2020, in addition to a number of non-material month-to-month leases. Our properties mainly consist of infusion pharmacies equipped with clean room and compounding capabilities. Some infusion pharmacies are co-located with an ambulatory infusion center where patients receive infusion treatments. We also have several home health agency offices. As of December 31, 2012 our property locations were as follows:

Corporate Offices

Elmsford, NY
Conshohocken, PA (1)
Eden Prairie, MN

Infusion Pharmacies and Home Nursing Locations (2) (4)

Alabama
Birmingham
California
Burbank
Connecticut
Cromwell
Milford
Vernon
Florida
Miami Lakes
Melbourne
Coral Springs
Tampa Bay
Georgia
Brunswick
Savannah
Illinois
Elmhurst
Silvis
Kentucky
Lexington
Louisiana
Baton Rouge
Covington Area
Elmwood
Maine
Auburn
Massachusetts
Southborough
Michigan
Auburn Hills
Minnesota
Eagan
Mississippi
Biloxi (two locations)
Brookhaven (two locations)
Columbia
Flowood
Gulfport
Hattiesburg (3)
Laurel
Lucedale
Magee
Meridian
Natchez
Pascagoula
Pearl
Picayune
Vicksburg
Waynesboro
Nebraska
Omaha
New Hampshire
Bedford
New Jersey
Morris Plains
New York
Lake Success
Ohio
Akron
Cincinnati
Columbus
Sylvania

Infusion Pharmacies and Home Nursing Locations (2)	
Pennsylvania	***Texas***
Sharpsburg	Grand Prairie
West Chester	Houston
Tennessee	***Virginia***
Cookeville	Chantilly
Fayetteville (two locations)	***Vermont***
Jackson (two locations)	Rutland
Knoxville	***South Carolina***
Memphis	North Charleston
Mt. Juliet	
Nashville (two locations)	
Oneida	
Savannah	
Selmer	
Waynesboro	

(1) Facility was vacated on January 4, 2013.
(2) Facility houses operations for Infusion or Home Health Services operations.
(3) Facility houses a home care nursing branch, Hospice parent location, and a support office in the same location.
(4) Subsequent to December 31, 2012, we acquired 14 new infusion pharmacy locations through the acquisition of HomeChoice Partners, Inc.

Item 3. ***Legal Proceedings***

On March 31, 2009, Professional Home Care Services, Inc., or PHCS, which is one of the subsidiaries we acquired through our acquisition of CHS, was sued by Alexander Infusion, LLC, a New York-based home infusion company, in the Supreme Court of the State of New York. The complaint alleges principally breach of contract arising in connection with PHCS's failure to consummate an acquisition of Alexander Infusion after failing to satisfy the conditions to PHCS's obligation to close. Alexander Infusion has sued for $3.5 million in damages. We believe Alexander Infusion's claims to be without merit and intend to continue to defend against the allegations vigorously. Furthermore, under the Merger Agreement, subject to certain limits, the former CHS Stockholders agreed to indemnify us in connection with any losses arising from claims made in respect of the acquisition agreement entered into between PHCS and Alexander Infusion.

As was previously disclosed, following responses to government subpoenas and discussions with the government, in May 2011, the Company was advised of a qui tam lawsuit filed under seal in federal court in Minnesota in 2006 and naming the Company as defendant. The complaint alleged violations of healthcare statutes and regulations by the Company and predecessor companies dating back to 2000. The Company has entered into a final settlement resolving all issues alleged in the complaint and the government's investigation in exchange for a release and dismissal of the claims.

PBM Services Payment Delay

The Company has a large PBM Services customer that had become approximately two months behind payment terms as of September 30, 2012 for a total amount owed to the Company of $7.8 million (of which $0.3 was due to the Company for PBM services rendered) ("the $7.8M Obligation"). The customer remitted full payment to the Company and fully satisfied the $7.8M Obligation in December, 2012. This customer has also provided the Company with a release of any and all claims it may have against the Company that relate to PBM services rendered, including those relating to the $7.8M Obligation.

Item 4. Mine Safety Disclosures

Item not applicable.

Executive Officers of BioScrip

Name	Title	Age
Richard M. Smith	President and Chief Executive Officer	53
Hai Tran	Chief Financial Officer and Treasurer	43
Patricia Bogusz	VP Finance and Principal Accounting Officer	53
Daniel Colucci	VP PBM Services	47
Barbara Cormier	Chief Compliance Officer and Privacy Officer	69
David Evans	Senior Vice President, Strategic Operations	48
Vito Ponzio, Jr.	Senior Vice President, Human Resources	58
Brian Stiver	Senior Vice President, National Infusion Sales	50

Each officer is appointed by and serves at the pleasure of the Board of Directors subject to the terms of their respective employment and/or severance agreements with the Company. There is neither a family relationship between any of the officers named and any other executive officer or member of the Board of Directors nor any arrangement or understanding pursuant to which any person was selected as an officer. The service period of each officer in the positions listed and other business experience for the past five years is listed below.

Richard M. Smith — President and Chief Executive Officer since January, 2011. President and Chief Operating Officer since January, 2009. Prior to joining the Company, Mr. Smith was Chief Executive Officer and a director of Byram Healthcare Centers, Inc.

Hai Tran — Chief Financial Officer since May, 2012. Prior to joining the Company, Mr. Tran was the Chief Financial Officer and VP International of Harris Healthcare Solutions, a subsidiary of Harris Corporation, a diversified technology company. From 2008 to 2011, Mr. Tran served as Chief Financial Officer of Catalyst Health Solutions, Inc. (Nasdaq: CHSI). Mr. Tran served as Vice President and Treasurer of Hanger Orthopedic Group (NYSE: HGR), from 2006 to May 2008.

Patricia Bogusz — Vice President Finance and Principal Accounting Officer since April, 2011. Vice President and Controller from July, 2007 to April, 2011.

Daniel Colucci — Vice President of PBM Services for BioScrip since April of 2005.

Barbara Cormier — Chief Compliance Officer since 2003 and Privacy Officer since 2012.

David Evans — Senior Vice President, Strategic Operations since February, 2009. Prior to joining BioScrip, Mr. Evans was Chief Financial Officer and Secretary of Byram Healthcare Centers, Inc.,

Vito Ponzio, Jr. — Senior Vice President, Human Resources since December, 2010. Mr. Ponzio joined BioScrip as VP, Community Store Division. Prior to joining the Company in January, 2010, Mr. Ponzio was the Senior Vice President, Administration for Coram Specialty Infusion Services (“Coram”), a division of Apria Healthcare.

Brian Stiver — Senior Vice President of Sales since July 2012. Prior to joining BioScrip, Mr. Stiver was Vice President, Specialty Pharmacy, at Walgreen Co.

PART II

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

Our common stock, par value $0.0001 per share ("Common Stock"), is traded on the Nasdaq Global Market under the symbol "BIOS." The following table represents the range of high and low sale prices for our Common Stock for the last eight quarters. Such prices reflect interdealer prices, without retail mark-up, mark-down or commission and may not necessarily represent actual transactions.

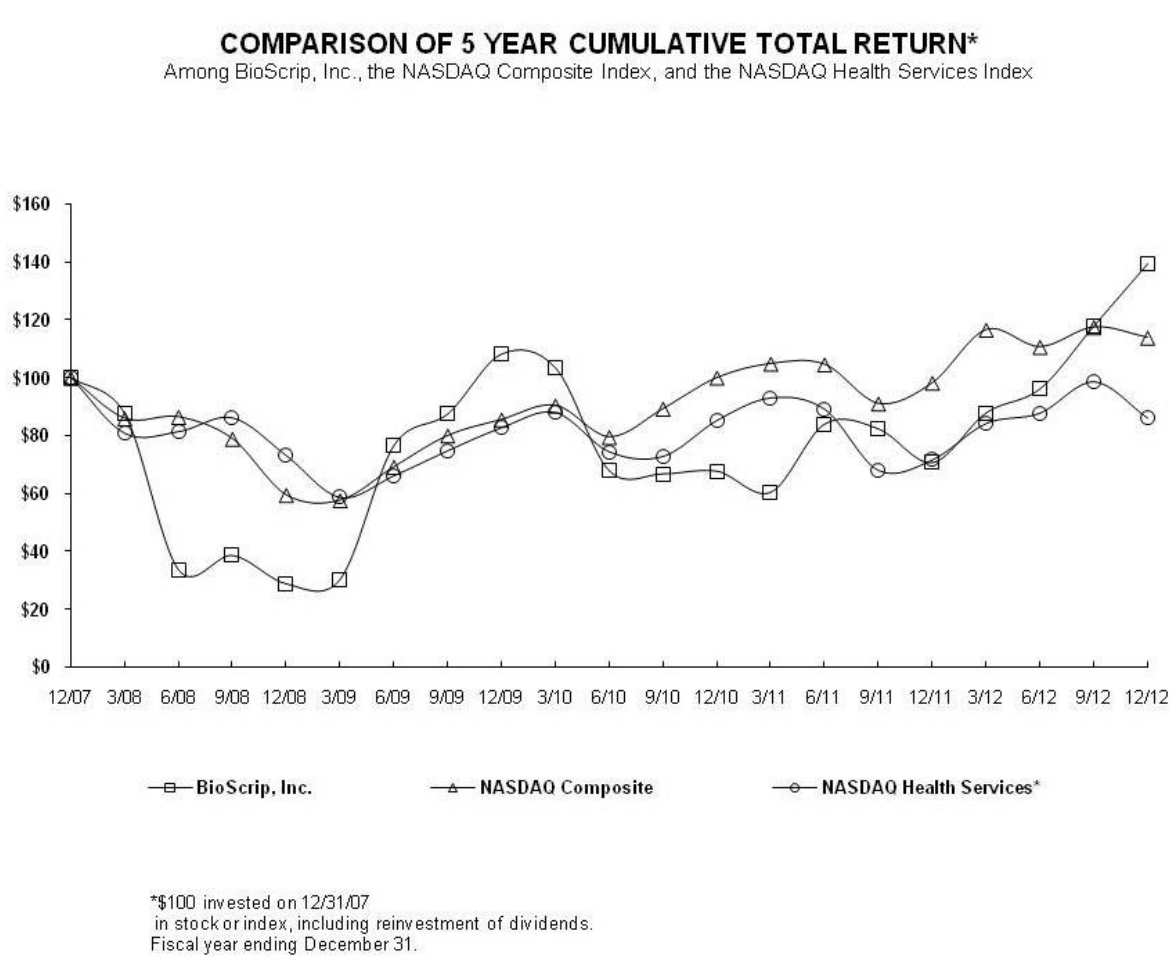
		High	Low
2012	First Quarter	$ 7.40	$ 5.20
	Second Quarter	$ 7.88	$ 6.43
	Third Quarter	$ 9.23	$ 6.14
	Fourth Quarter	$ 11.06	$ 8.81
2011	First Quarter	$ 5.52	$ 4.06
	Second Quarter	$ 7.85	$ 4.19
	Third Quarter	$ 7.53	$ 5.00
	Fourth Quarter	$ 7.05	$ 5.05

As of March 5, 2013, there were 208 stockholders of record of our Common Stock in addition to approximately 7,800 stockholders whose shares were held in nominee name. On March 5, 2013 the closing sale price of our Common Stock on the Nasdaq Global Market was $10.09.

We have never paid cash dividends on our Common Stock and do not anticipate doing so in the foreseeable future.

Information regarding securities authorized for issuance under our equity compensation plans required by this Item 5 is included in our definitive proxy statement to be filed with the SEC on or before April 30, 2013 in connection with our 2013 Annual Meeting of Stockholders and is hereby incorporated by reference.

The graph set forth below compares, for the five-year period commencing December 31, 2007 and ending December 31, 2012, the total cumulative return to holders of our Common Stock with the cumulative total return of the Nasdaq Composite Index and the Nasdaq Health Services Index.



Item 6. ***Selected Consolidated Financial Data***

The selected consolidated financial data presented below should be read in conjunction with, and is qualified in its entirety by reference to, Management's Discussion and Analysis and our Consolidated Financial Statements and the Notes thereto appearing elsewhere in this Annual Report. Acquisitions during the periods below include CHS, beginning March, 2010, DS Pharmacy, beginning July, 2010 and InfuScience beginning August, 2012. Divestitures during this period include the Pharmacy Services Asset Sale. All historical amounts have been restated to reclassify amounts directly associated with the divested operations as discontinued operations. These do not necessarily reflect what the actual results would have been if the business had not actually included the divested operations at the beginning of the period.

	December 31,				
Balance Sheet Data	**2012**	**2011**	**2010**	**2009**	**2008**
			(in thousands)		
Working capital	$ 127,158	$ 71,695	$ 50,137	$ 91,078	$ 58,844
Total assets	$ 642,376	$ 677,102	$ 663,986	$ 287,220	$ 246,957
Long-term debt	$ 226,379	$ 293,459	$ 306,469	$ 30,389	$ 50,411
Stockholders' equity	$ 293,409	$ 215,279	$ 200,101	$ 155,793	$ 95,537
Total assets from discontinued operations	$ —	$ 59,004	$ 73,022	$ 57,648	$ 47,639

Statement of Operations Data	Year Ended December 31,				
	2012	2011	2010	2009	2008
	(in thousands, except per share amounts)				
Revenue	$ 662,637	$ 554,506	$ 430,707	$ 204,646	$ 177,967
Gross profit	$ 224,960	$ 215,415	$ 160,536	$ 48,270	$ 38,272
Acquisition and integration expenses (1)	$ 4,046	$ —	$ 5,924	$ 1,774	$ —
Restructuring and other expenses (2)	$ 5,143	$ 7,909	$ 3,985	$ —	$ —
Net (loss) income from continuing operations	$ (8,340)	$ (424)	$ (67,675)	$ 35,076	$ (46,110)
Net income (loss) from discontinued operations	$ 73,047	$ 8,296	$ (1,467)	$ 19,023	$ (27,922)
Net income (loss) (3) (4) (5)	$ 64,707	$ 7,872	$ (69,142)	$ 54,099	$ (74,032)
Net (loss) income from continuing operations per basic share	$ (0.15)	$ (0.01)	$ (1.34)	$ 0.90	$ (1.20)
Net income (loss) from discontinued operations per basic share	$ 1.30	$ 0.15	$ (0.03)	$ 0.49	$ (0.73)
Net income (loss) per basic share	$ 1.15	$ 0.14	$ (1.37)	$ 1.39	$ (1.93)
Net (loss) income from continuing operations per diluted share	$ (0.15)	$ (0.01)	$ (1.34)	$ 0.88	$ (1.2)
Net income (loss) from discontinued operations per diluted share	$ 1.30	$ 0.15	$ (0.03)	$ 0.48	$ (0.73)
Net income (loss) per diluted share (6)	$ 1.15	$ 0.14	$ (1.37)	$ 1.36	$ (1.93)
Weighted average shares outstanding used					
in computing:					
basic income (loss) per share	56,239	54,505	50,374	38,985	38,417
diluted income (loss) per share	56,239	54,505	50,374	39,737	38,417

(1) Expenses in 2012 related to the acquisitions of InfuScience and HomeChoice Partners and the integration of InfuScience as well as costs associated with the divestiture resulting from the Pharmacy Services Asset Sale. Expenses in 2010 related to the acquisitions and integrations of CHS and DS Pharmacy. Expenses in 2009 related to the acquisition of CHS.

(2) These costs were related to our strategic assessment and related restructuring plan.

(3) Net income (loss) in 2010 included a $48.7 million income tax expense charge, primarily related to the recognition of a valuation allowance on deferred tax assets. Net income (loss) in 2010 also includes a $9.6 million loss on extinguishment of debt associated with the refinancing of our senior secured facility in December 2010.

(4) Net income (loss) in 2009 includes a $52.5 million tax benefit, primarily relating to the reversal of the valuation allowance on deferred tax assets.

(5) Net income (loss) in 2008 included a $90.0 million charge related to the impairment of goodwill, of which $60.8 million is associated with discontinued operations. It also includes a $3.9 million charge related to the write-off of intangible assets, including customer lists and non-compete agreements, all of which are associated with discontinued operations.

(6) The net income (loss) per diluted share excludes the effect of all common stock equivalents for all years except 2009, as their inclusion would be anti-dilutive to (loss) income per share from continuing operations.

Item 7. ***Management's Discussion and Analysis of Financial Condition and Results of Operations***

The following Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") is designed to assist the reader in understanding our Consolidated Financial Statements, the changes in certain key items in those financial statements from year-to-year and the primary factors that accounted for those changes, as well as how certain accounting principles affect our Consolidated Financial Statements. The discussion also provides information about the financial results of the segments of our business to provide a better understanding of how those segments and their results affect our financial condition and results of operations as a whole. This discussion should be read in conjunction with our Consolidated Financial Statements, including the Notes thereto, and the information discussed in Item 1A — Risk Factors.

“Safe Harbor” Statement Under the Private Securities Litigation Reform Act of 1995

This report contains statements not purely historical and which may be considered forward-looking statements within the meaning of Section 27A of the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), including statements regarding our expectations, hopes, beliefs, intentions or strategies regarding the future. These forward looking statements may include, but are not limited to:

- our expectations regarding financial condition or results of operations in future periods;
- our future sources of, and needs for, liquidity and capital resources;
- our expectations regarding economic and business conditions;
- our expectations regarding potential legislative and regulatory changes impacting the level of reimbursement received from the Medicare and state Medicaid programs;
- our expectations regarding the size and growth of the market for our products and services;
- our business strategies and our ability to grow our business;
- the implementation or interpretation of current or future regulations and legislation, particularly governmental oversight of our business;
- our ability to maintain contracts and relationships with our customers;
- sales and marketing efforts;
- status of material contractual arrangements, including the negotiation or re-negotiation of such arrangements;
- our ability to maintain supplies and services, which could be impacted by force majeure events such as war, strike, riot, crime, or "acts of God" such as hurricanes, flooding, blizzards or earthquakes;
- future capital expenditures;
- our high level of indebtedness;
- our ability to make principal payments on our debt and satisfy the other covenants contained in our senior secured credit facility and other debt agreements;
- our ability to hire and retain key employees;
- our ability to successfully execute our succession plans;
- our ability to execute our acquisition and growth strategy;
- our ability to successfully integrate businesses we acquire; and
- other risks and uncertainties described from time to time in our filings with the SEC.

Investors are cautioned that any such forward-looking statements are not guarantees of future performance, involve risks and uncertainties and that actual results may differ materially from those possible results discussed in the forward-looking statements as a result of various factors. This report contains information regarding important factors that could cause such differences. These factors include, among other things:

- risks associated with increased government regulation related to the health care and insurance industries in general, and more specifically, home health providers, pharmacy benefit management and home infusion providers;
- our expectation regarding the interim and ultimate outcome of commercial disputes, including litigation;
- unfavorable economic and market conditions;
- disruptions in supplies and services resulting from force majeure events such as war, strike, riot, crime, or "acts of God" such as hurricanes, flooding, blizzards or earthquakes;
- reductions in federal and state reimbursement for our products and services;
- delays or suspensions of Federal and state payments for services provided;
- efforts to reduce healthcare costs and alter health care financing;
- effects of the Patient Protection and Affordable Care Act, or PPACA, and the Health Care and Education Reconciliation Act of 2010, which amended PPACA, and the related accountable care organizations;
- existence of complex laws and regulations relating to our business;
- achieving financial covenants under our credit facility;
- availability of financing sources;
- declines and other changes in revenue due to the expiration of short-term contracts;
- network lock-outs and decisions to in-source by health insurers including lockouts with respect to acquired entities;
- unforeseen contract terminations;
- difficulties in the implementation and conversion of our new pharmacy systems;
- difficulties integrating businesses we acquire;
- increases or other changes in the Company’s acquisition cost for its products;
- increased competition from competitors having greater financial, technical, reimbursement, marketing and other resources could have the effect of reducing prices and margins;

- the level of our indebtedness may limit our ability to execute our business strategy and increase the risk of default under our debt obligations,
- introduction of new drugs can cause prescribers to adopt therapies for existing patients that are less profitable to us; and
- changes in industry pricing benchmarks could have the effect of reducing prices and margins.

You should not place undue reliance on such forward-looking statements as they speak only as of the date they are made. Except as required by law, we assume no obligation to publicly update or revise any forward-looking statement even if experience or future changes make it clear that any projected results expressed or implied therein will not be realized.

Business Overview

We are a national provider of home infusion and other home healthcare services that partners with patients, physicians, hospitals, healthcare payors and pharmaceutical manufacturers to provide clinical management solutions and the delivery of cost-effective access to prescription medications and home healthcare services. Our services are designed to improve clinical outcomes to patients with chronic and acute healthcare conditions while controlling overall healthcare costs. As of December 31, 2012, we had a total of 81 locations in 24 states encompassing 32 home nursing locations and 49 home infusion locations, including two contract affiliated infusion pharmacies.

Our platform provides nationwide service capabilities and the ability to deliver clinical management services that offer patients a high-touch, community-based and home-based care environment. Our core services are provided in coordination with, and under the direction of, a patient's physician. Our pharmacy and home health professionals, including pharmacists, nurses, respiratory therapists and physical therapists, work with the physician to develop a plan of care suited to our patient's specific needs. Whether in the home, physician office, ambulatory infusion center or other alternate sites of care, we provide products, services and condition-specific clinical management programs tailored to improve the care of individuals with complex health conditions such as cancer, multiple sclerosis, organ transplants, bleeding disorders, rheumatoid arthritis, immune deficiencies and congestive heart failure.

Our business is currently reported under three segments: Infusion Services, Home Health Services and pharmacy benefit management ("PBM") Services. These three segments reflect how our chief operating decision maker reviews our results in terms of allocating resources and assessing operating and financial performance.

The Infusion Services segment provides services consisting of home infusion therapy, respiratory therapy and the provision of durable medical equipment products and services. Infusion services include the dispensing and administering of infusion-based drugs, which typically require additional nursing and clinical management services, equipment to administer the correct dosage and patient training designed to improve patient outcomes. Home infusion services also include the dispensing of self-injectible therapies.

The Home Health Services segment provides services which include the provision of skilled nursing services and therapy visits, private duty nursing services, hospice services, rehabilitation services and medical social services to patients primarily in their home.

Since the acquisition of Critical Homecare Solutions Holdings, Inc. ("CHS") in March, 2010, we have implemented certain managed care contracts across both the Infusion Services and Home Health Services segments. The contracted rates have reduced reimbursement levels compared to the out-of-network reimbursement levels received prior to June, 2010, when we began the process of moving certain out-of-network payors under national contracts. On a year-over-year basis, the contracts have reduced net revenue per patient in certain therapies and drug classes and, correspondingly, our gross profit margin and Segment Adjusted EBITDA, as defined below. However, the contract relationship allows greater access to more insured lives. We have seen sequential and year-over-year volume trends increase from these contracted relationships.

The PBM Services segment consists of integrated PBM services, which primarily consists of discount card programs. The discount card programs provide a cost effective alternative for individuals who may be uninsured, underinsured or may have restrictive coverage that disallows reimbursement for certain medications. Under these discount programs, individuals who present a discount card at one of the Company's participating network pharmacies receive prescription medications at a discounted price compared to the retail price. In addition, in the Company's capacity as a pharmacy benefit manager, it has fully funded prescription benefit programs where the Company reimburses its network pharmacies and third party payors in turn reimburse the Company based on Medi-Span reported pricing for those claims fulfilled for their plan participants.

In the fourth quarter of 2010, we commenced a strategic assessment of our business and operations. This assessment focused on expanding revenue opportunities and lowering corporate overhead, including workforce and benefit reductions and facility rationalization. It also examined our market strengths and opportunities and compared our position to that of our competitors. As

a result of the assessment, we focused our growth on investments in the Infusion Services and Home Health Services segments and elected to pursue offers for a large portion of our Pharmacy Services segment. Thus, on February 1, 2012, the Company entered into a Community Pharmacy and Mail Business Purchase Agreement (the “Asset Purchase Agreement”) by and among Walgreen Co. and certain subsidiaries (collectively, the “Buyers”) and the Company and certain subsidiaries (collectively, the "Sellers") with respect to the sale of certain assets, rights and properties (the “Pharmacy Services Asset Sale”) relating to the Sellers' traditional and specialty pharmacy mail and community retail pharmacy store operations.

Pursuant to the terms of the Asset Purchase Agreement, we received a total purchase price of approximately $173.8 million during 2012, including approximately $158.8 million at closing (which included monies received for the inventories on hand attributable to the operations subject to the Pharmacy Services Asset Sale), and a subsequent additional purchase price payment of $15.0 million based on events related to the Buyer's retention of certain business after closing. Similarly, the Company may be required to refund up to approximately $6.4 million of the cash received to the Buyers. Any gain associated with this contingency will be recorded once the final amount retained or refunded is known. The $173.8 million purchase price excluded all accounts receivable and working capital liabilities relating to the operations subject to the sale, which were retained by us. Approximately $50.8 million of these net assets were converted to cash subsequent to the sale.

We are continuing to execute our strategic plan and are investing in opportunities to maximize stockholder value going forward. We deployed the proceeds of the Pharmacy Services Asset Sale seeking business acquisition opportunities described below. We also paid off the line of credit balance following the sale and negotiated improved terms for its ongoing use.

On July 31, 2012, we acquired InfuScience, Inc. (“InfuScience”) for a cash payment of $38.3 million. The purchase price could increase to $41.4 million based on the results of operations during the 24 month period following the closing. InfuScience acquires, develops and operates businesses providing alternate site infusion pharmacy services. The acquisition has added five infusion centers located in Eagan, Minnesota; Omaha, Nebraska; Chantilly, Virginia; Charleston, South Carolina; and Savannah,Georgia.

Subsequent to December 31, 2012, we acquired of all of the issued and outstanding equity of HomeChoice Partners, Inc., a Delaware corporation (“HomeChoice”) pursuant to that Stock Purchase Agreement dated December 12, 2012 (the “Purchase Agreement”) by and among the Company, HomeChoice, DaVita HealthCare Partners Inc., a Delaware corporation and majority stockholder of HomeChoice, and the other stockholders of HomeChoice. The purchase price was $70 million, subject to adjustment based in part on the net working capital of HomeChoice at closing (the “Purchase Price”). The Purchase Price may also be increased in an amount up to $20 million if HomeChoice reaches certain performance milestones in the two years following the closing. The Company funded the Acquisition with a combination of cash on hand and its revolving credit facility.

HomeChoice is a provider of alternate-site infusion pharmacy services. Headquartered in Norfolk, VA, HomeChoice services approximately 15,000 patients annually and has fourteen infusion pharmacy locations in Pennsylvania, Washington, DC, Maryland, Virginia, North Carolina, South Carolina, Georgia, Missouri, and Alabama. The transaction became effective on February 1, 2013.

Other strategic options that we may consider in addition to further potential acquisitions include redeeming all or a portion of the unsecured notes and reinvesting certain proceeds in the Infusion Services and Home Health Services operating segments, subject to the terms of our revolving credit facility and the indenture governing our the senior unsecured notes.

The Pharmacy Services Asset Sale discussed above caused us to perform a further strategic assessment of our business and operations in order to align our corporate structure with our remaining business operations. As a result of the reassessment and subsequent realignment, we have focused on expanding revenue opportunities and lowering corporate overhead as well as redeploying our resources strategically. These actions have resulted in write-downs of certain long−lived assets, employee severance, retention bonus payments and accelerated recognition of expense associated with certain of our contractual obligations. The impact of these efforts included a reduction in salaries, benefits, rent and other facility costs. The redeployment of resources following the Asset Sale has better positioned us for growth in our strategic areas of operation; however, the impact of these actions on our future Consolidated Financial Statements cannot be estimated.

Regulatory Matters Update

Approximately 33% of revenue for the year ended December 31, 2012 was derived directly from Medicare, state Medicaid programs or other government payors. We also provide services to beneficiaries of Medicare, Medicaid and other government-sponsored healthcare programs through managed care entities. Medicare Part D, for example, is administered through managed care entities. In the normal course of business, the Company and our customers are subject to legislative and regulatory changes impacting the level of reimbursement received from the Medicare and state Medicaid programs.

State Medicaid Programs

In 2011 and 2012, increased Medicaid spending, combined with slow state revenue growth, led many states to institute measures aimed at controlling spending growth. Spending cuts have taken many forms including reducing eligibility and benefits, eliminating certain types of services, and provider reimbursement reductions. In addition, some states are moving beneficiaries to managed care programs in an effort to reduce costs.

No single state Medicaid program represents greater than 4% of our consolidated revenue for the year ended December 31, 2012 and no individual state Medicaid reimbursement reduction to us as a provider is expected to have a material effect on our Consolidated Financial Statements. We are continually assessing the impact of the state Medicaid reimbursement cuts as states propose, finalize and implement various cost-saving measures. We incurred a 4.25% reimbursement cut in 2011 from TennCare, the state of Tennessee Medicaid program, for certain home health services, and incurred a second 4.25% TennCare rate cut in the Home Health Services segment effective January 1, 2012. In May 2012, the second rate cut was adjusted to 2.50%, which was retroactively effective beginning on January 1, 2012. These reimbursement rate cuts decreased revenue by approximately $3.0 million.

Given the reimbursement pressures, we continue to improve operational efficiencies and reduce costs to mitigate the impact on results of operations where possible. In some cases, reimbursement rate reductions may result in negative operating results, and we would likely exit some or all services where rate reductions result in unacceptable returns to our shareholders.

Medicare

Federal efforts to reduce Medicare spending are expected to continue in 2013. Congress first passed the Patient Protection and Affordable Care Act ("PPACA"), and the Health Care and Education Reconciliation Act of 2010, which amended PPACA. In August 2011, Congress passed a deficit reduction agreement that created a Super Committee that was tasked with proposing legislation by November 23, 2011. Because the Super Committee did not act, automatic Medicare cuts were scheduled to go into effect January 1, 2013. However, Congress passed legislation extending the time for such cuts by two months. Unless Congress takes additional action, Medicare reimbursement to providers will be reduced overall by 2% beginning April 1, 2013. The reductions in Medicare reimbursement could have an adverse effect on our results of operations, although the impact cannot yet be predicted. There may also be other impacts from the automatic spending reductions that we cannot predict. For example, staff at CMS and Medicare administrative contractors may be reduced, which could result in delays in claims processing.

Thus far, we have been impacted by CMS rule revisions which reduced reimbursement rates applicable to the home health division of our business. In October 2011, CMS issued a final rule to update and revise Medicare home health rates for calendar year 2012. The 2012 final rule reduced our Home Health segment revenue and gross profit by $1.9 million on an annual basis compared to 2011. In November 2012, CMS issued a final rule for home health agency reimbursement for 2013 that would result in a 0.01% decrease in reimbursement. We estimate that this rule will have a limited impact on revenue.

Critical Accounting Estimates

Our Consolidated Financial Statements have been prepared in accordance with United States generally accepted accounting principles (“GAAP”). In preparing our financial statements, we are required to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. We evaluate our estimates and judgments on an ongoing basis. We base our estimates and judgments on historical experience and on various other factors that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that may not be readily apparent from other sources. Our actual results may differ from these estimates, and different assumptions or conditions may yield different estimates. The following discussion highlights what we believe to be the critical accounting estimates and judgments made in the preparation of our Consolidated Financial Statements.

The following discussion is not intended to be a comprehensive list of all the accounting estimates or judgments made in the preparation of our financial statements and in many cases the accounting treatment of a particular transaction is specifically dictated by GAAP, with no need for management’s judgment in its application. See our audited Consolidated Financial Statements and notes thereto appearing elsewhere in this Annual Report, which contain a description of our accounting policies and other disclosures required by GAAP.

Revenue Recognition

We generate revenue principally through the sale of prescription drugs and nursing services. Prescription drugs are dispensed through a pharmacy owned by us. Fee-for-service agreements include: (i) pharmacy agreements, where we dispense prescription medications through our pharmacy facilities and (ii) PBM agreements, where prescription medications are dispensed through pharmacies participating in our retail pharmacy network.

Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Subtopic 605-25, *Revenue Recognition: Multiple-Element Arrangements* ("ASC 605-25"), addresses situations in which there are multiple deliverables under one revenue arrangement with a customer and provides guidance in determining whether multiple deliverables should be recognized separately or in combination. We provide a variety of therapies to patients. For infusion-related therapies, we frequently provide multiple deliverables of drugs and related nursing services. After applying the criteria from ASC 605-25, we concluded that separate units of accounting exist in revenue arrangements with multiple deliverables. If the drug is shipped, the drug revenue is recognized at the time of shipment, and nursing revenue is recognized on the date of service. The Company allocates revenue consideration based on the relative fair value as determined by the Company's best estimate of selling price to separate the revenue where there are multiple deliverables under one revenue arrangement.

Revenue generated under PBM agreements is classified as either gross or net based on whether we are acting as a principal or an agent in the fulfillment of prescriptions through our retail pharmacy network. When we independently have a contractual obligation to pay a network pharmacy provider for benefits provided to its Plan Sponsors' members, and therefore are the "primary obligor" as defined in ASC Topic 605, *Revenue Recognition* ("ASC 605"), we include payments (which include the drug ingredient cost) from these Plan Sponsors as revenue and payments to the network pharmacy providers as cost of revenue. These transactions require us to pay network pharmacy providers, assume credit risk of Plan Sponsors and act as a principal. If we merely act as an agent, and consequently administer Plan Sponsors' network pharmacy contracts, we do not have the primary obligation to pay the network pharmacy and assume credit risk and as such record only the administrative fees (and not the drug ingredient cost) as revenue.

Revenue generated under discount card agreements is recognized when the discount card is used to purchase a prescription drug. The revenue is based on contractual rates per transaction. Broker fees associated with the marketing of the discount cards are incurred and recognized at the time the card is used and classified as selling, general and administrative expense in the Consolidated Statements of Operations.

In our Infusion/Home Health Services segment, we also recognize infusion nursing revenue as the estimated net realizable amounts from patients and Plan Sponsors for services rendered and products provided. This revenue is recognized as the treatment plan is administered to the patient and is recorded at amounts estimated to be received under reimbursement or payment arrangements with payors.

Under the Medicare Prospective Payment System program, home health net revenue is recorded based on a reimbursement rate which varies based on the severity of the patient's condition, service needs and certain other factors. Revenue is recognized ratably over a 60-day episode period and is subject to adjustment during this period if there are significant changes in the patient's condition during the treatment period or if the patient is discharged but readmitted to another agency within the same 60-day episodic period. Medicare cash receipts under the prospective payment system are initially recognized as deferred revenue and are subsequently recognized as revenue over the 60-day episode period.

Allowance for Doubtful Accounts

The allowance for doubtful accounts is based on estimates of losses related to receivable balances. The risk of collection varies based upon the product, the payor (commercial health insurance and government) and the patient's ability to pay the amounts not reimbursed by the payor. We estimate the allowance for doubtful accounts based upon several factors including the age of the outstanding receivables, the historical experience of collections, adjusting for current economic conditions and, in some cases, evaluating specific customer accounts for the ability to pay. Collection agencies are employed and legal action is taken when we determine that taking collection actions is reasonable relative to the probability of receiving payment on amounts owed. Management judgment is used to assess the collectability of accounts and the economic ability of our customers to pay. Judgment is also used to assess trends in collections and the effects of systems and business process changes on our expected collection rates. The Company reviews the estimation process quarterly and makes changes to the estimates as necessary. When it is determined that a customer account is uncollectible, that balance is written off against the existing allowance.

The following table sets forth the aging of our December 31, 2012 and December 31, 2011 net accounts receivable (net of allowance for contractual adjustments and prior to allowance for doubtful accounts), aged based on date of service and categorized based on the three primary overall types of accounts receivable characteristics (in thousands):

As of December 31, 2012	0 - 180 days	Over 180 days	Total
Government	$ 41,124	$ 2,744	$ 43,868
Commercial (3)	75,389	26,137	101,526
Patient	1,784	4,137	5,921
	$ 118,297	$ 33,018	151,315
Allowance for doubtful accounts			(22,212)
Total			$ 129,103

As of December 31, 2011	0 - 180 days	Over 180 days	Total
Government (1)	$ 36,498	$ 5,477	$ 41,975
Commercial (1)(2)	175,730	21,504	197,234
Patient	6,348	2,583	8,931
	$ 218,576	$ 29,564	248,140
Allowance for doubtful accounts			(22,728)
Total			$ 225,412

(1) Government includes $2.5 million and commercial includes $0.9 million of accounts receivable and allowance for doubtful accounts related to the termination of the Centers for Medicare & Medicaid Competitive Acquisition Program (“CAP”) contract as of December 31, 2011.

(2) In prior years, commercial included one pharmacy network agreement under which various Plan Sponsors were served and which Plan Sponsors account for, in the aggregate, receivables that accounted for 21% of the Company's total accounts receivable balance as of December 31, 2011. This contract was transferred to Walgreen Co. as part of the Pharmacy Services Asset Sale. At December 31, 2012 there was no remaining balance associated with this Pharmacy Services contract.

(3) Commercial balances declined $95.7 million during the year ended December 31, 2012 due to the collection of outstanding Pharmacy related balances retained following the sale of the related operations. The commercial balance greater than 180 days old increased by $4.6 million primarily because of the remaining Pharmacy related balances that have not yet been collected. At December 31, 2012 the remaining Pharmacy Services gross accounts receivable balance was $12.8 million and the related allowance for doubtful accounts was $8.0 million.

Allowance for Contractual Discounts

We are reimbursed by Plan Sponsors for products and services we provide. Payments for medications and services covered by Plan Sponsors are generally less than billed charges. We monitor revenue and receivables from Plan Sponsors on an account-specific basis and record an estimated contractual allowance for certain revenue and receivable balances at the revenue recognition date to properly account for anticipated differences between amounts billed and amounts reimbursed. Accordingly, the total revenue and receivables reported in our financial statements are recorded at the amounts expected to be received from these payors. Since billing functions for a portion of our revenue are largely computerized, which enables on-line adjudication (i.e., submitting charges to third-party payors electronically, with simultaneous feedback of the amount the primary insurance plan expects to pay) at the time of sale to record net revenue, exposure to estimating contractual allowance adjustments is limited. For the remaining portion of our revenue, the contractual allowance is estimated based on several criteria, including unbilled and/or initially rejected claims, historical trends based on actual claims paid, current contract and reimbursement terms, and changes in customer base and payor/product mix. Contractual allowance estimates are adjusted to actual amounts as cash is received and claims are settled. We do not believe these changes in estimates are material.

Amounts due to Plan Sponsors

Payables to Plan Sponsors primarily represent payments received from Plan Sponsors in excess of the contractually required reimbursement. These amounts are refunded to Plan Sponsors. These payables also include the sharing of manufacturers’ rebates with Plan Sponsors.

Income Taxes

As part of the process of preparing our Consolidated Financial Statements, management is required to estimate income taxes in each of the jurisdictions in which we operate. We account for income taxes under ASC Topic 740, *Income Taxes* (“ASC

740"). ASC 740 requires the use of the asset and liability method of accounting for income taxes. Under this method, deferred taxes are determined by calculating the future tax consequences attributable to differences between the financial accounting and tax bases of existing assets and liabilities. A valuation allowance is recorded against deferred tax assets when, in the opinion of management, it is more likely than not that we will not be able to realize the benefit from our deferred tax assets. A valuation allowance is reversed when sufficient evidence exists that we will be able to realize the benefits of our deferred tax assets.

As of December 31, 2012, the Company has a full valuation allowance of $39.7 million recorded against its deferred tax assets. We will maintain this valuation allowance until an appropriate level of profitability is sustained or we are able to develop tax planning strategies that enable us to conclude that it is more likely than not that our deferred tax assets are realizable. As of December 31, 2012, the Company has deferred tax liabilities of $11.3 million relating to indefinite-lived goodwill and intangibles. These deferred tax liabilities cannot be used as a future source of taxable income because of the indefinite nature of the assets and therefore cannot be used to offset the deferred tax assets that require a valuation allowance. The deferred tax liability for these indefinite-lived goodwill and intangibles will continue to increase as the Company continues to amortize the tax deductible amounts of these assets. The tax amortization related to these assets will increase the deferred tax liability as well as create tax expense in future years until the full valuation allowance is reversed or the asset is fully amortized for tax purposes.

We file income tax returns, including returns for our subsidiaries, as prescribed by Federal tax laws and the tax laws of the state and local jurisdictions in which we operate. Our uncertain tax positions are related to tax years that remain subject to examination and are recognized in the financial statements when the recognition threshold and measurement attributes of ASC 740 are met. Interest and penalties related to unrecognized tax benefits are recorded as income tax expense.

Goodwill and Intangible Assets

In accordance with ASC Topic 350, *Intangibles – Goodwill and Other* ("ASC 350"), we evaluate goodwill and indefinite lived intangible assets for impairment on an annual basis and whenever events or circumstances exist that indicate that the carrying value of goodwill may no longer be recoverable.

The goodwill valuation is based on a two-step process. The first step compares the fair value of a reporting unit with its carrying amount, including goodwill. If the first step indicates that the fair value of the reporting unit is less than its carrying amount, the second step must be performed which determines the implied fair value of reporting unit goodwill. The measurement of possible impairment is based upon the comparison of the implied fair value of reporting unit to its carrying value. We use a third party valuation specialist to assist in the annual impairment valuation.

As of December 31, 2012, our reporting units include goodwill of $304.3 million in the Infusion reporting unit; goodwill of $33.8 million and indefinite lived assets of $15.4 million in the Home Health Services reporting unit; and goodwill of $12.7 million in the PBM Services reporting unit. The goodwill of the Infusion and Home Health reporting units was primarily recorded as a result of the acquisition of CHS in March 2010. In performing an annual evaluation of goodwill, a reporting unit fair value is determined based on discounted future cash flows and a market-based comparison to industry peers. Significant estimates used in a fair value determination include future forecasted earnings and the working capital requirements of the business to generate estimated cash flows. Our estimates could be materially impacted by factors such as competitive forces, changes in growth trends and specific industry conditions, with the potential for a corresponding adverse effect on financial condition and operating results potentially resulting in impairment of the goodwill. None of the reporting units are more susceptible to general economic conditions than others, however our Home Health reporting unit is more susceptible to government reimbursement changes. If future cash flows do not achieve estimated levels due to further rate cuts in Medicaid or Medicare or other changes impacting operating performance, goodwill of the Home Health Services reporting unit could be impaired. Also, the cash flow model used to determine fair value is sensitive to the discount rate used. We performed a sensitivity analysis on the discount rate and determined that the discount rate used could increase by a factor of 50.0% and the goodwill of our Infusion and PBM Services reporting segments would not be impaired. However, the goodwill of the Home Health Services reporting unit would be impaired if there is a need to use a higher discount rate in the analysis. Carrying values are determined based on the specific assets and liabilities of each reporting unit and allocations of corporate assets, liabilities and expenses.

As of December 31, 2012, indefinite lived intangible assets included $9.6 million in certificates of need and $5.8 million of trademarks acquired in the CHS transaction. These intangible assets are evaluated for impairment using techniques similar to the goodwill valuation described above, based largely upon discounted cash flows. If future cash flows do not achieve estimated levels, intangible assets could become impaired in future periods. Like goodwill, the cash flow model used to determine fair value is sensitive to the discount rate used. We performed a sensitivity analysis on the discount rate and determined that the discount rate used could increase by a factor of 50.0% and the indefinite lived intangible assets would not be impaired.

Impairment of Long Lived Assets

We evaluate whether events and circumstances have occurred that indicate that the remaining estimated useful life of long-lived assets may warrant revision or that the remaining balance of an asset may not be recoverable in accordance with the provisions of ASC Topic 360, *Property, Plant and Equipment* (“ASC 360”). The measurement of possible impairment of property, plant and equipment is based on the ability to recover the balance of assets from expected future operating cash flows on an undiscounted basis. Impairment losses, if any, would be determined based on the present value of the cash flows using discount rates that reflect the inherent risk of the underlying business.

Accounting for Stock-Based Compensation

Compensation cost for all share-based payments are based on the grant-date fair value estimated in accordance with the provisions of ASC Topic 718, *Compensation – Stock Compensation* (“ASC 718”). The fair value of each option award is estimated on the date of grant using a binomial option-pricing model that uses the following assumptions: (i) expected volatility is based on the historical volatility of our stock, (ii) the risk-free interest rate for periods within the contractual life of the option is based on the U.S. Treasury yield curve in effect at the time of the grant, and (iii) the expected life of options granted is derived from previous history of stock exercises from the grant date and represents the period of time that options granted are expected to be outstanding. We use historical data to estimate option exercise and employee termination assumptions under the valuation model. The fair value of the award is amortized to expense on a straight line basis over the requisite service period. We expense restricted stock awards based on vesting requirements, including time elapsed, market conditions, and/or performance conditions. Because of these requirements, the weighted average period for which the expense is recognized varies. We expense stock appreciation right ("SAR") awards based on vesting requirements. In addition, because they are settled with cash, the fair value of the SAR awards are revalued on a quarterly basis.

Off-Balance Sheet Arrangements

Investment in Equity of Unconsolidated Affiliate

In accordance with the applicable accounting guidance for the consolidation of variable interest entities, the Company analyzes its variable interests to determine if an entity in which it has a variable interest is a variable interest entity. The Company's analysis includes both quantitative and qualitative reviews. The Company bases its quantitative analysis on the forecasted cash flows of the entity, and its qualitative analysis on its review of the design of the entity, its organizational structure, including decision making ability, and relevant financial agreements. The Company also uses its qualitative analysis to determine if it must consolidate a variable interest entity as its primary beneficiary.

The Company has an affiliate equity investment in a variable interest entity that has developed a platform that facilitates the flow, management and sharing of vital health and medical information with stakeholders across the healthcare ecosystem. The Company concluded that the entity is a variable interest entity because the equity investment at risk is not sufficient to permit the entity to finance its activities without additional support from other parties. The Company has determined that it is not the primary beneficiary as power to direct the activities that most significantly impact economic performance of the entity is held by another stakeholder, and therefore does not consolidate the entity. The Company recorded its initial net investment in the variable interest entity of $6.9 million and subsequent working capital contributions in the investments in and advances to unconsolidated affiliate line on the accompanying Consolidated Balance Sheets using the equity method of accounting. The maximum exposure to loss as a result of its involvement with the variable interest entity is $19.0 million, which represents the current book value and additional commitments made to fund future potential working capital needs.

Reclassifications

Certain prior period amounts have been reclassified to conform to the current year presentation due primarily to the new segment structure. Such reclassifications had no material effect on our previously reported Consolidated Financial Statements.

Results of Operations

The following discussion is based on the Consolidated Financial Statements of the Company. It compares our annual results of operations with the prior year results of operations.

Year ended December 31, 2012 vs. December 31, 2011

	Year Ended December 31, (in thousands)					
	2012		2011		Change	
Revenue	$ 662,637		$ 554,506		$	108,131
Gross profit	$ 224,960	33.9 %	$ 215,415	38.8 %	$	9,545
Income from operations	$ 13,288	2.0 %	$ 25,553	4.6 %	$	(12,265)
Interest expense, net	$ 26,067	3.9 %	$ 25,542	4.6 %	$	525
(Loss) income before income taxes	$ (12,779)	(1.9)%	$ 11	— %	$	(12,790)
Net loss from continuing operations	$ (8,340)	(1.3)%	$ (424)	(0.1)%	$	(7,916)
Net income from discontinued operations	$ 73,047	11.0 %	$ 8,296	1.5 %	$	64,751

Revenue. Revenue for the year ended December 31, 2012 was $662.6 million compared to revenue of $554.5 million for the year ended December 31, 2011.

Infusion Services segment revenue for the year ended December 31, 2012 was $481.6 million, compared to revenue of $374.3 million for the same period in 2011, an increase of $107.3 million, or 28.6%. Product revenue increased $105.9 million, or 29.0%. Infusion service revenue increased $1.3 million, or 15.1%.

Home Health Services segment revenue for the year ended December 31, 2012 was $69.2 million compared to revenue of $69.6 million for the same period in 2011, a decrease of $0.4 million, or 0.6%. This reduction is primarily due to the decline in Medicare reimbursement rates.

PBM Services segment revenue for the year ended December 31, 2012 was $111.9 million compared to revenue of $110.6 million for the same period in 2011, an increase of $1.3 million, or 1.2%. This increase is due primarily to an increase in discount card programs sales.

Cost of Revenue and Gross Profit. Cost of revenue for the year ended December 31, 2012 was $437.7 million compared to $339.1 million for the same period in 2011. Gross profit for the year ended December 31, 2012 was $225.0 million compared to $215.4 million for the same period in 2011, an increase of $9.6 million, or 4.5%. Gross profit as a percentage of revenue decreased to 33.9% in the year ended December 31, 2012 from 38.8% in the year ended December 31, 2011. The net increase in gross profit was due to organic growth and gross profit contributed by InfuScience partially offset by a decrease in average gross profit percentage. The decline in gross profit as a percentage of revenue is due to a higher mix of lower margin chronic product sales which resulted from our infusion relationship with certain payers and the shift of administration of these products to the home or alternate site from hospital outpatient clinics and physician offices.

Selling, General and Administrative Expenses. Selling, general and administrative expenses ("SG&A") for the year ended December 31, 2012 were $184.5 million, or 27.8% of total revenue, compared to $167.1 million, or 30.1% of total revenue, for the same period in 2011. The increase in SG&A was primarily due additional employee and facility related costs necessary to support the significant growth in infusion revenues, combined with the addition of InfuScience's operations.

Bad Debt Expense. For the year ended December 31, 2012, bad debt expense was $14.0 million, or 2.1% of revenue, compared to $11.4 million, or 2.1% of revenue, for the same period in 2011.

Acquisition and Integration Expenses. During the year ended December 31, 2012 we incurred acquisition and integration expenses of $4.0 million associated with the acquisitions of InfuScience and HomeChoice Partners. We did not incur acquisition and integration related expenses during the year ended December 31, 2011.

Restructuring and Other Expenses. We incurred restructuring and other expenses of approximately $5.1 million and $7.9 million during the years ended December 31, 2012 and December 31, 2011. During the year ended December 31, 2012 these expenses included approximately $3.0 million of transitional expenses (e.g., training, redundant salaries and wages, and retention

bonuses for certain critical personnel), $1.1 million of employee severance and other benefit-related costs, $0.5 million of third-party consulting costs, and $0.5 million of other costs. Restructuring and other expenses during the year ended December 31, 2011 consisted of approximately $2.9 million of third-party consulting costs, $1.9 million of employee severance and other benefit-related costs related to workforce reductions, $1.6 million of facility-related costs and $1.5 million of transitional expenses. Restructuring and other expenses include expenses resulting from the execution of our strategic assessment and related restructuring plans, consisting primarily of employee severance and other benefit-related costs, third-party consulting costs, facility-related costs, and certain other costs. During the year ended December 31, 2012 they also include $0.8 million for certain state sales tax liabilities related to an acquired company for which prior period tax amounts were identified and recorded in 2012.

The Company anticipates that additional restructuring will occur and thus we may incur significant additional charges such as the write down of certain long-lived assets, employee severance, other restructuring type charges, temporary redundant expenses, potential cash bonus payments and potential accelerated payments or termination costs for certain of its contractual obligations, which impact the Company's future Consolidated Financial Statements.

Amortization of Intangibles. During the year ended December 31, 2012, we recorded amortization of intangible assets of $4.0 million compared to $3.4 million for the prior year. The increase in amortization is in large part related to the intangible assets recorded as a result of the acquisition of InfuScience.

Interest Expense, Net. Net interest expense was $26.1 million for the year ended December 31, 2012, compared to $25.5 million for the same period in 2011. Interest expense for the year ended December 31, 2012 included $24.2 million of interest expense related to our $225.0 million of Senior Unsecured Notes and $2.8 million related to the Senior Secured Revolving Credit Facility. Interest expense for the year ended December 31, 2011 included $24.1 million of interest expense, related to our $225.0 million of Senior Unsecured Notes and $4.4 million related to the $150.0 million Senior Secured Revolving Credit Facility.

Income Tax Expense (Benefit). Income tax expense for the year ended December 31, 2012 was a benefit of $(4.4) million on pre-tax net loss of $12.8 million. The income tax benefit in 2012 includes the tax benefit from the pre-tax loss from continuing operations since we had pre-tax income from discontinued operations. The benefit from the pre-tax loss from continuing operations is used before the deferred tax assets from prior years are used to reduce the taxable gain generated from discontinued operations. Our income tax expense was $0.4 million for the year ended December 31, 2011 on a pre-tax net income of $11,000. The income tax expense in 2011 includes tax expense for the tax amortization associated with the indefinite-lived assets and state taxes offset by changes in tax contingencies during the year. The change in the effective tax rate is primarily due to the tax benefit from the pre-tax loss in 2012.

Net Loss and Loss Per Share from Continuing Operations. Net loss from continuing operations for the year ended December 31, 2012 was $8.3 million, or $0.15 per basic and diluted share. Net loss was $0.4 million, or $0.01 per basic and diluted share, for the same period in the preceding year. The reduction in net income from continuing operations resulted from a lower gross profit percentage on revenues due to product mix, and from incremental operating expenses needed to support the growth in revenue volume.

Net Income and Income Per Share from Discontinued Operations. Net income from discontinued operations for the year ended December 31, 2012 was $73.0 million, or $1.30 per basic and diluted share. This reflects a gain of $115.0 million before taxes from the Pharmacy Services Asset Sale offset by one-time charges of approximately $13.4 million as a result of the transaction, a net loss from the operations of the traditional and specialty pharmacy mail operations and community retail pharmacy stores for the period ended May 4, 2012 of ($1.5) million, and additional costs of $18.7 million, including incremental bad debt expense of $9.6 million, associated with the subsequent resolution of retained receivables and working capital liabilities relating to the operations subject to the sale. Net income from discontinued operations for the year ended December 31, 2011 was $8.3 million reflecting the net income related to the operations of the traditional and specialty pharmacy mail operations and community retail pharmacy stores, net of corporate SG&A expenses directly associated with the operations. Income tax expense of $6.1 million and $0.9 million for the years ended December 31, 2012 and 2011, respectively have also been allocated to discontinued operations. Similarly, $0.8 million and $2.8 million of interest expense have been allocated to discontinued operations for the years ended December 31, 2012 and 2011, respectively.

Also impacting net income per share from discontinued operations, the Company has entered into a final settlement resolving a previously disclosed lawsuit. Following responses to government subpoenas and discussions with the government, in May 2011 the Company was advised of a qui tam lawsuit filed under seal in federal court in Minnesota in 2006 and naming the Company as defendant. The complaint alleged violations of healthcare statutes and regulations by the Company and predecessor companies dating back to 2000. The Company entered into a final settlement under which it paid the states $0.6 million and the federal government $4.4 million, resolving all issues alleged in the complaint and the government's investigation in exchange for a release and dismissal of the claims. A related qui tam relator's employment termination claim and her lawyer's statutory legal fee claim

were also resolved. During the year ended December 31, 2011, the Company recorded a legal settlement expense of $4.8 million related to this settlement. During the year ended December 31, 2012, the Company recorded additional legal settlement expense of $0.8 million to account for the final settlement amount. The legal settlement expenses were included in income (loss) from discontinued operations, net of income taxes in the accompanying Unaudited Consolidated Statements of Operations. As of December 31, 2012 there was no remaining liability and as of December 31, 2011, there was a liability of $4.8 million, included in accrued expenses and other current liabilities in the accompanying Consolidated Balance Sheets related to the settlement.

Year ended December 31, 2011 vs. December 31, 2010

	Year Ended December 31, (in thousands)					
	2011		2010		Change	
Revenue	$ 554,506		$ 430,707		$	123,799
Gross profit	$ 215,415	38.8 %	$ 160,536	37.3 %	$	54,879
Income from operations	$ 25,553	4.6 %	$ 7,539	1.8 %	$	18,014
Interest expense, net	$ 25,542	4.6 %	$ 23,560	5.5 %	$	1,982
Income before income taxes	$ 11	— %	$ (18,975)	(4.4)%	$	18,986
Net (loss) income from continuing operations	$ (424)	(0.1)%	$ (67,675)	(15.7)%	$	67,251
Net income from discontinued operations	$ 8,296	1.5 %	$ (1,467)	(0.3)%	$	9,763

Revenue. Revenue for the year ended December 31, 2011 was $554.5 million compared to revenue of $430.7 million for the year ended December 31, 2010.

Infusion Services segment revenue for the year ended December 31, 2011 was $374.3 million, compared to revenue of $315.7 million for the same period in 2010, an increase of $58.8 million, or 18.6%. Product revenue increased $58.8 million, or 19.2%, as a result of incremental first quarter revenue contributed by the legacy Critical Homecare Solutions, Inc. (“CHS”) business, which was acquired March 25, 2010. Service revenue decreased $0.3 million, or 2.9%, due to reduced Medicare and TennCare reimbursement rates.

Home Health Service segment revenues increased $13.4 million or 23.8% due to a full year of CHS revenue in the year ended December 31, 2011. This compares with only nine months of revenue included in the year ended December 31, 2010.

PBM Services revenue for the year ended December 31, 2011 was $110.6 million compared to revenue of $58.7 million for the same period in 2010, an increase of $51.9 million, or 88.4%. This was primarily due to revenue on new contracts and the expansion of the number of patients served on existing contracts during the period. Revenue also increased in the discount card operations.

Cost of Revenue and Gross Profit. Cost of revenue for the year ended December 31, 2011 was $339.1 million compared to $270.2 million for the same period in 2010. Gross profit for the year ended December 31, 2011 was $215.4 million compared to $160.5 million for the same period in 2010, an increase of $54.9 million, or 34.2%. Gross profit as a percentage of revenue increased to 38.8% in the year ended December 31, 2011 from 37.3% in the year ended December 31, 2010. The increase in gross profit percentage from 2010 to 2011 was primarily the result of the acquisition of CHS and purchasing synergies generated post-acquisition.

Selling, General and Administrative Expenses. Selling, general and administrative expenses for the year ended December 31, 2011 were $167.1 million, or 30.1% of total revenue, compared to $133.4 million, or 31.0% of total revenue, for the same period in 2010. The increase in SG&A was primarily due to $11.6 million of additional expense related to our expanded operations after acquiring CHS, and an increase of $20.7 million in brokers' fees related to growth in our discount card programs.

Bad Debt Expense. For the year ended December 31, 2011, bad debt expense was $11.4 million, or 2.1% of revenue, compared to $7.2 million, or 1.7% of revenue, for the same period in 2010. This $4.2 million increase in bad debt expense is largely due to the increase in revenue.

Acquisition and Integration Expenses. During the year ended December 31, 2010, we recorded $5.9 million of costs related to the acquisition of CHS. These costs were primarily related to legal, audit and financial advisory fees associated with the acquisition of CHS. We did not incur acquisition and integration expenses during the year ended December 31, 2011.

Restructuring and Other Expenses. As a result of the strategic assessment and related restructuring plans, we incurred restructuring expenses of approximately $7.9 million in the year ended December 31, 2011 and $4.0 million during the year ended December 31, 2010. Restructuring expenses in fiscal 2011 primarily consisted of approximately $2.9 million in third-party consulting costs, $1.9 million of employee severance and benefit-related costs, $1.6 million in facility-related costs and $1.5 million of other transitional costs. Restructuring expenses in fiscal 2010 primarily consisted of approximately $2.3 million related to employee severance and other benefit-related costs, $1.2 million of third-party consulting costs, and $0.5 million of other transitional costs.

Amortization of Intangibles. During the year ended December 31, 2011, we recorded amortization of intangible assets of $3.4 million as compared to $2.5 million in the year ended December 31, 2010. The amortization was on intangible assets recorded as a result of the 2010 CHS acquisition.

Interest Expense, Net. Net interest expense was $25.5 million for the year ended December 31, 2011, as compared to $23.6 million for the same period in 2010. The increase in interest expense was due the inclusion of a full year of interest expense related to the new debt structure implemented in March 2010.

Income Tax Expense. Income tax expense of $0.4 million was recorded for the year ended December 31, 2011 on a pre-tax net gain of $11,000. This compares with an income tax expense of $48.7 million in 2010 on a pre-tax loss of $19.0 million. The income tax expense in 2011 includes the tax amortization associated with the indefinite-lived assets and state taxes, which were offset by changes in tax contingencies during the year. The income tax expense in 2010 includes the establishment of a valuation allowance recorded on deferred tax assets of $54.0 million.

Net Loss and Loss Per Share from Continuing Operations. Net loss from continuing operations for the year ended December 31, 2011 was $0.4 million or $0.01 per basic and diluted share as compared with a net loss for the year ended December 31, 2010 totaling $67.7 million, or $1.34 per basic or diluted share. The next loss from continuing operations in the year ended December 31, 2010 was primarily a result of the establishment of a $54.0 million valuation reserve for deferred tax assets.

Net Income (Loss) and Income (Loss) Per Share from Discontinued Operations. Net income (loss) from discontinued operations for the years ended December 31, 2011 and 2010 was $8.3 million and ($1.5) million, respectively reflecting the net income related to the operations of the traditional and specialty pharmacy mail operations and community retail pharmacy stores, net of corporate SG&A expenses directly associated with the operations. During the year ended December 31, 2010, we recorded $3.9 million of legal settlement costs. These costs were the result of an independent arbitration award against the Company in a lawsuit brought by JPD, Inc. and James P. DiCello, the sellers of Northland Medical Pharmacy (“Northland”), which was purchased in late 2005 by Chronimed Holdings, Inc. (“Chronimed”), a wholly-owned subsidiary of the Company.

Non-GAAP measures. The following table reconciles GAAP net loss from continuing operations to Consolidated Adjusted EBITDA and Segment Adjusted EBITDA. EBITDA is net (loss) income from continuing operations adjusted for net interest expense, loss on extinguishment of debt, income tax expense, depreciation, amortization and stock-based compensation expense. Adjusted EBITDA excludes acquisition and integration expense, restructuring and other expense, and the write-off of receivables related to the CAP contract.

Consolidated Adjusted EBITDA and Segment Adjusted EBITDA are measures of earnings that management monitors as an important indicator of financial performance, particularly future earnings potential and recurring cash flow. Adjusted EBITDA is also a primary objective of the management bonus plan.

Non-GAAP financial measures have limitations as analytical tools and should not be considered in isolation or as a substitute for our financial results prepared in accordance with GAAP. The Company encourages investors to review these reconciliations. The Company qualifies its use of non-GAAP financial measures with cautionary statements as to their limitations.

	Years Ended December 31,		
	2012	2011	2010
	(in thousands)		
Results of Operations:			
Adjusted EBITDA by Segment before corporate overhead:			
Infusion Services	$ 36,764	$ 35,128	$ 37,853
Home Health Services	5,401	5,954	4,839
PBM Services	25,659	30,122	18,549
Total Segment Adjusted EBITDA	67,824	71,204	61,241
Corporate overhead	(26,755)	(23,308)	(29,830)
Consolidated Adjusted EBITDA	41,069	47,896	31,411
Interest expense, net	(26,067)	(25,542)	(23,560)
Loss on extinguishment of debt	—	—	(2,954)
Income tax benefit (expense)	4,439	(435)	(48,700)
Depreciation	(8,513)	(6,591)	(5,379)
Amortization of intangibles	(3,957)	(3,376)	(2,522)
Stock-based compensation expense	(6,122)	(4,467)	(3,320)
Acquisition and integration expenses	(4,046)	—	(5,924)
Restructuring and other expenses	(5,143)	(7,909)	(3,985)
Bad debt expense related to contract termination	—	—	(2,742)
Net loss from continuing operations, net of taxes	$ (8,340)	$ (424)	$ (67,675)

Infusion Services segment Adjusted EBITDA increased during the year ended December 31, 2012 as a result of our organic growth and from the acquisition of InfuScience , partially offset by increased costs to service the growth in lower margin chronic therapies and the added costs of converting our Lake Success, NY and Columbus, OH specialty pharmacy locations to infusion pharmacies but which are not yet operating at ultimate efficiency. The Company also incurred increased costs during 2012 related to various retained corporate support services that had been previously allocated to support the businesses that were sold.

Home Health Services segment Adjusted EBITDA declined due to a decrease in home health reimbursement rates from certain government payors.

PBM Services segment Adjusted EBITDA declined due to a reduction in revenues resulting in part from a rate reduction on the discount card business.

Non-GAAP adjusted EPS. In an effort to provide better transparency into the operational results of the business and better comparability to other market participants, we have identified non-operating (non-GAAP) categories of earnings per share (Non-GAAP Adjusted EPS) from continuing operations. Non-GAAP Adjusted EPS is a measure that excludes the effects of restructuring and other expenses, certain acquisition-related charges such as transaction costs and acquisition integration expenses, amortization of intangibles, and stock-based compensation expense. The company considers these costs to be outside the operational performance of the business. The tables below provide a reconciliation of the company's net loss from continuing operations, net of income taxes, and basic and diluted loss per common share from continuing operations as reported under GAAP to its Adjusted EPS presentation, which is a non-GAAP measure. The Company's calculation of Non-GAAP Adjusted EPS, as presented, may differ from similarly titled measures reported by other companies.

	Years Ended December 31,		
	2012 [1, 4]	2011 [2, 5]	2010 [3,6]
Net loss from continuing operations, net of income taxes	(8,340)	(424)	(67,675)
Non-GAAP adjustments:			
Restructuring and other expenses	3,099	4,798	2,461
Acquisition and integration expenses	2,438	—	3,658
Amortization of intangibles	2,384	2,048	1,557
Stock-based compensation expense	3,689	2,710	2,050
Non-GAAP net income (loss) from continuing operations	3,270	9,132	(57,949)
Loss per share from continuing operations, basic and diluted	(0.15)	(0.01)	(1.34)
Non-GAAP adjustments:			
Restructuring and other expenses	0.06	0.09	0.05
Acquisition and integration expenses	0.04	—	0.07
Amortization of intangibles	0.04	0.04	0.03
Stock-based compensation expense	0.07	0.05	0.04
Non-GAAP earnings (loss) per share from continuing operations, basic and diluted	0.06	0.17	(1.15)
Weighted average shares outstanding, basic	56,239	54,505	50,374
Weighted average shares outstanding, diluted	57,001	55,150	50,374

[1] For the year ended December 31, 2012, non-GAAP net income from continuing operations adjustments are net of tax, calculated using an annual effective tax rate method. The tax expense netted against restructuring and other expenses, acquisition and integration expenses, amortization of intangibles, and stock-based compensation expense was $2,044, $1,608, 1,573 and $2,433, respectively.

[2] For the year ended December 31, 2011, non-GAAP net income from continuing operations adjustments are net of tax, calculated using an annual effective tax rate method. The tax expense netted against restructuring and other expenses, amortization of intangibles, and stock-based compensation expense was $3,111, $1,328, and $1,757, respectively.

[3] For the year ended December 31, 2010 non-GAAP net income from continuing operations adjustments are net of tax, calculated using an annual effective tax rate method. The tax expense netted against restructuring and other expenses, acquisition and integration expenses, amortization of intangibles, and stock-based compensation expense was $1,524, $2,266, $965 and $1,270, respectively.

[4] For the year ended December 31, 2012, Non-GAAP Adjusted EPS per basic and diluted share from continuing operations adjustments are net of tax, calculated using an annual effective tax rate method. The tax expense per common and diluted share netted against restructuring and other expenses, acquisition and integration expenses, amortization of intangibles, and stock-based compensation expense was $(0.04), $(0.03), $(0.03), and $(0.04) per share, respectively.

[5] For the year ended December 31, 2011, Non-GAAP Adjusted EPS per basic and diluted share from continuing operations adjustments are net of tax, calculated using an annual effective tax rate method. The tax expense per basic and diluted share netted against restructuring and other expenses, amortization of intangibles, and stock-based compensation expense were $(0.06), $(0.02), and $(0.03) per share, respectively.

[6] For the year ended December 31, 2010, Non-GAAP Adjusted EPS per basic and diluted share from continuing operations adjustments are net of tax, calculated using an annual effective tax rate method. The tax expense per common and diluted share netted against restructuring and other expenses, acquisition and integration expenses, amortization of intangibles, and stock-based compensation expense was $(0.03), $(0.04), $(0.02), and $(0.03) per share, respectively.

Liquidity and Capital Resources

We utilize funds generated from operations for general working capital needs, capital expenditures and acquisitions.

Net cash provided by operating activities of continuing operations totaled $49.9 million during the year ended December 31, 2012 compared to $3.1 million during the year ended December 31, 2011. This inflow of cash from operating activities related to continuing operations for the year ended December 31, 2012 was due to $101.3 million of collections on receivables offset by $48.2 million in payments on accounts payable, largely due to the conversion to cash of Pharmacy Services related receivables and payables retained upon the sale of certain of the unit's assets.

Net cash used in investing activities associated with continuing operations during the year ended December 31, 2012 was $67.6 million primarily due to the $41.4 million invested to acquire InfuScience combined with a $10.7 million investment in an affiliated variable interest entity. There were also $11.0 million invested in purchases of property and equipment. This compared to a use of cash in investing activities for continuing operations during 2011 totaling $8.3 million, primarily related to purchases of property and equipment.

Net cash used in financing activities during the year ended December 31, 2012 of $58.6 million reflected the payment of the outstanding balance on the line of credit at the time of the Pharmacy Services Asset Sale. Net cash used in financing activities during the year ended December 31, 2011 of $17.1 million reflected a reduction in the balance of the line of credit during the year.

Net cash provided by operating activities from continuing operations totaled $3.1 million during the year ended December 31, 2011 compared to $33.6 million used during the year ended December 31, 2010. This $38.6 million increase in cash provided by continuing operating activities compared to the prior year was due to a decrease in working capital requirements of $13.2 million and a reduction in net loss from continuing operations of $23.5 million in net income, adjusted for non-cash items such as the reversal of deferred tax valuation allowance, depreciation and amortization of intangibles.

Net cash used in investing activities related to continuing operations during the year ended December 31, 2011 was $8.3 million compared to $104.2 million during the same period in 2010. This $95.9 million decrease was primarily related to the acquisitions of CHS and DS Pharmacy during 2010.

Net cash used in financing activities during the year ended December 31, 2011 was $17.1 million compared to $130.0 million provided by financing activities during the same period in 2010. This $147.0 million decrease was primarily due to the prior year borrowings used to finance the CHS acquisition, partially offset by the prior year payoffs of the long-term debt assumed in the CHS acquisition and our prior line of credit.

At December 31, 2012, we had working capital of $127.2 million compared to $71.7 million at December 31, 2011. The increase was primarily due to the Pharmacy Services Asset sale, partially offset by the purchase of InfuScience.

Under the terms of the senior unsecured notes, upon a major asset sale such as the sale, of our Pharmacy Services assets., we are obligated to use proceeds from the sale to reduce debt under the amended and restated facility or reinvest the proceeds in the business. If we do not use the sale proceeds within 360 days, we are required to make a tender offer to redeem a portion of the senior unsecured notes, based on defined criteria. We may also use the sale proceeds under certain terms to redeem a portion of the senior unsecured notes prior to the one year anniversary date of the sale. As of March 5, 2013, we have utilized sufficient proceeds to reduce the line of credit and to invest in Infusion acquisitions. As such, there is no requirement for us to make a tender offer to redeem a portion of the senior unsecured notes.

We believe that funds available under the senior secured revolving credit facility and cash expected to be generated from operating activities, will be sufficient to fund our anticipated working capital, information technology systems investments, scheduled interest repayments and other cash needs for at least the next twelve months, based on historical levels.

We also intend to pursue additional joint venture arrangements, business acquisitions and other transactions designed to expand our business, with borrowings under the senior secured revolving credit facility, other future indebtedness or, if appropriate, the private and/or public sale or exchange of our debt or equity securities.

The Senior Secured Revolving Credit Facility matures on March 25, 2015 and initially had an available line of credit totaling $150.0 million. The amount of borrowings which may be made under the Senior Secured Revolving Credit Facility is based on a borrowing base comprised of specified percentages of eligible receivables and eligible inventory, up to a maximum available line of credit and subject to certain liquidity and reserve requirements. If the amount of borrowings outstanding under the revolving credit facility exceeds the borrowing base then in effect, the Company will be required to repay such borrowings in an amount

sufficient to eliminate such excess. Interest on advances is based on a Eurodollar rate plus an applicable margin of 3.5%, with the Eurodollar rate initially having a floor of 1.25%. In the event of any default, the interest rate may be increased to 2.0% over the rate applicable to such loans. The facility also carries a non-utilization fee of 0.50% per annum, payable monthly, on the unused portion of the credit line. The facility includes $5.0 million of availability for letters of credit and $10.0 million of availability for swing line loans. Initially we were required to maintain a balance of not less than $30.0 million.

On July 3, 2012, the Company entered into a Third Amendment to the Second Amended and Restated Credit Agreement, by and among the Company, as borrower, all of its subsidiaries as guarantors thereto, the lenders, Healthcare Finance Group, LLC, an administrative agent, and the other parties thereto. The amendment reduced revolving commitments from $150 million to $125 million; eliminated the minimum revolving balance requirement; increased the basket limitation for loans and advances to third parties and investments in permitted joint ventures to $60 million; removed the dollar limitation on permitted acquisitions so long as the proposed acquisition meets the pro forma and other conditions; lowered the LIBOR floor to 1.00% from 1.25%; and modified the definition of the term “Consolidated EBITDA”. As of December, 2012, there were no borrowings under the senior secured revolving credit facility. We are in compliance with all covenants as of December 31, 2012 and as of the date of filing of this report.

The weighted average interest rate on our short term borrowings during the year ended December 31, 2012 was 4.69%. The weighted average interest rate on our short term borrowings during the year ended December 31, 2011 was 4.66%.

The $225.0 million senior unsecured notes are due October 1, 2015. The interest rate on the senior unsecured notes is 10.25% and is paid semi-annually, in arrears, on April 1 and October 1 of each year.

At December 31, 2012, the Company had Federal net operating loss (“NOL”) carry forwards of approximately $49.6million, $26.6 million of which is subject to an annual limitation, which will begin expiring in 2026 and later. Of the Company’s $49.6 million of Federal NOLs, $14.6 million will be recorded in additional paid-in capital when realized. These NOLs are related to the exercise of non-qualified stock options and restricted stock grants. The Company has post-apportioned state NOL carry forwards of approximately $97.2 million, the majority of which will begin expiring in 2017 and later.

At December 31, 2010, there was $4.3 million of cash on deposit as collateral for certain letters of credit ("LC") from commercial banks obtained in the ordinary course of business. During the year ended December 31, 2011, we were refunded the $4.3 million in cash and accepted a reduction of our availability on the line of credit to satisfy the collateral requirements. At December 31, 2012 availability on the line of credit was reduced by $3.5 million as collateral deposit outstanding for letters of credit.

The following table sets forth our contractual obligations affecting cash in the future as of December 31, 2012 (in thousands):

	Payments Due in Period				
Contractual Obligations	**Total**	**Less than 1 Year**	**1-3 Years**	**4-5 Years**	**After 5 Years**
Long-term debt (1)	$ 288,486	$ 23,063	$ 265,423	$ —	$ —
Operating lease obligations	30,538	6,481	10,827	8,178	5,052
Capital lease obligations (1)	1,457	1,017	417	23	—
Purchase commitment	29,359	29,359	—	—	—
Total	$ 349,840	$ 59,920	$ 276,667	$ 8,201	$ 5,052

(1) Includes both principal and interest payments.

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

Exposure to market risk for changes in interest rates relates to our outstanding debt. At December 31, 2012, we had $226.4 million of long-term debt, of which $0.5 million was subject to variable interest rates. We are exposed to interest rate risk primarily through our borrowing activities under the Revolving Credit Facility, discussed in Item 6 of this Report. A one percent increase in current market interest rates would not have a material impact on our annual net interest expense. We do not use financial instruments for trading or other speculative purposes and are not a party to any derivative financial instruments at this time.

Management does not believe that our exposure to interest rate market risk is material at this time because the variable interest rate negotiated in the Revolving Credit Facility is subject to a rate floor which is above current market rates. Market rates can

increase and not cause an increase in our variable interest rate. Our Revolving Credit Facility agreement provides for the use of interest rate swaps as a strategy to manage interest rate market risk. We regularly assess the significance of interest rate market risk as part of our treasury operations and as circumstances change and will enter into interest rate swaps as appropriate.

At December 31, 2012, the carrying values of accounts receivable, accounts payable, claims payable, payables to Plan Sponsors and others approximate fair value due to their short-term nature. We had no borrowings under our Revolving Credit Facility at December 31, 2012. We believe the carrying value of our long-term debt under our Revolving Credit Facility approximates fair market value.

Item 8. ***Financial Statements and Supplementary Data***

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
BioScrip, Inc.

We have audited the accompanying consolidated balance sheets of BioScrip, Inc. and subsidiaries as of December 31, 2012 and 2011, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2012. Our audits also included the financial statement schedule listed in the Index at Item 15. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of BioScrip, Inc. and subsidiaries at December 31, 2012 and 2011 and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2012, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), BioScrip, Inc.'s internal control over financial reporting as of December 31, 2012, based on criteria established in *Internal Control-Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 14, 2013, expressed an unqualified opinion thereon.

Minneapolis, Minnesota
March 14, 2013

/s/ Ernst & Young LLP

BIOSCRIP, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(in thousands, except for share amounts)

	December 31, 2012	December 31, 2011
ASSETS		
Current assets		
Cash and cash equivalents	$ 62,101	$ —
Receivables, less allowance for doubtful accounts of $22,212 and $22,728 at December 31, 2012 and December 31, 2011, respectively	129,103	225,412
Inventory	34,034	17,997
Prepaid expenses and other current assets	10,189	10,184
Current assets from discontinued operations	—	38,876
Total current assets	235,427	292,469
Property and equipment, net	23,721	26,951
Goodwill	350,810	312,387
Intangible assets, net	17,446	19,622
Deferred financing costs	2,877	3,992
Investments in and advances to unconsolidated affiliate	10,042	—
Other non-current assets	2,053	1,552
Non-current assets from discontinued operations	—	20,129
Total assets	$ 642,376	$ 677,102
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Current portion of long-term debt	$ 953	$ 66,161
Accounts payable	34,438	79,155
Claims payable	7,411	11,766
Amounts due to plan sponsors	18,173	25,219
Accrued interest	5,803	5,825
Accrued expenses and other current liabilities	41,491	32,648
Total current liabilities	108,269	220,774
Long-term debt, net of current portion	225,426	227,298
Deferred taxes	10,291	10,295
Other non-current liabilities	4,981	3,456
Total liabilities	348,967	461,823
Stockholders' equity		
Preferred stock, $.0001 par value; 5,000,000 shares authorized; no shares issued or outstanding	—	—
Common stock, $.0001 par value; 125,000,000 shares authorized; shares issued: 59,600,713 and 57,800,791, respectively; shares outstanding: 57,026,957 and 55,109,038, respectively	6	6
Treasury stock, shares at cost: 2,582,520 and 2,638,421, respectively	(10,311)	(10,461)
Additional paid-in capital	388,798	375,525
Accumulated deficit	(85,084)	(149,791)
Total stockholders' equity	293,409	215,279
Total liabilities and stockholders' equity	$ 642,376	$ 677,102

See accompanying Notes to the Consolidated Financial Statements.

BIOSCRIP, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share amounts)

	Years Ended December 31,		
	2012	**2011**	**2010**
Product revenue	$ 471,506	$ 365,526	$ 306,688
Service revenue	191,131	188,980	124,019
Total revenue	662,637	554,506	430,707
Cost of product revenue	325,271	238,072	199,749
Cost of service revenue	112,406	101,019	70,422
Total cost of revenue	437,677	339,091	270,171
Gross profit	224,960	215,415	160,536
Selling, general and administrative expenses	184,491	167,136	133,381
Bad debt expense	14,035	11,441	7,185
Acquisition and integration expenses	4,046	—	5,924
Restructuring and other expenses	5,143	7,909	3,985
Amortization of intangibles	3,957	3,376	2,522
Income from operations	13,288	25,553	7,539
Interest expense, net	26,067	25,542	23,560
Loss on extinguishment of debt	—	—	2,954
Income (loss) from continuing operations, before income taxes	(12,779)	11	(18,975)
Tax (benefit) provision	(4,439)	435	48,700
Net loss from continuing operations, net of income taxes	(8,340)	(424)	(67,675)
Net income from discontinued operations, net of income taxes	73,047	8,296	(1,467)
Net income (loss)	$ 64,707	$ 7,872	$ (69,142)
(Loss) income per common share:			
Basic loss from continuing operations	$ (0.15)	$ (0.01)	$ (1.34)
Basic income from discontinued operations	$ 1.30	$ 0.15	$ (0.03)
Basic income (loss)	$ 1.15	$ 0.14	$ (1.37)
Diluted loss from continuing operations	$ (0.15)	$ (0.01)	$ (1.34)
Diluted income from discontinued operations	1.30	0.15	(0.03)
Diluted income (loss)	1.15	0.14	(1.37)
Weighted average common shares outstanding:			
Basic	56,239	54,505	50,374
Diluted	56,239	54,505	50,374

See accompanying Notes to the Consolidated Financial Statements.

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

	Common Stock	Treasury Stock	Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity
Balance December 31, 2009	$ 4	$ (10,367)	$ 254,677	$ (88,521)	$ 155,793
Exercise of employee stock compensation plans	—	—	4,116	—	4,116
Income tax shortfall from stock option plan	—	—	(596)	—	(596)
Surrender of stock to satisfy minimum tax withholding	—	(129)	1	—	(128)
Compensation under employee stock compensation plans	—	—	3,374	—	3,374
Equity consideration to former CHS owners	2	—	106,682	—	106,684
Net income	—	—	—	(69,142)	(69,142)
Balance December 31, 2010	6	(10,496)	368,254	(157,663)	200,101
Exercise of employee stock compensation plans	—	—	3,198	—	3,198
Surrender of stock to satisfy minimum tax withholding	—	(189)	—	—	(189)
Issuance of treasury stock for restricted stock vesting	—	224	(224)	—	—
Compensation under employee stock compensation plans	—	—	4,297	—	4,297
Net income	—	—	—	7,872	7,872
Balance December 31, 2011	6	(10,461)	375,525	(149,791)	215,279
Exercise of employee stock compensation plans	—	—	8,611	—	8,611
Surrender of stock to satisfy minimum tax withholding	—	(174)	—	—	(174)
Issuance of treasury stock for restricted stock vesting	—	324	(324)	—	—
Compensation under employee stock compensation plans	—	—	4,986	—	4,986
Net income	—	—	—	64,707	64,707
Balance December 31, 2012	$ 6	$ (10,311)	$ 388,798	$ (85,084)	$ 293,409

See accompanying Notes to the Consolidated Financial Statements.

BIOSCRIP, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Years Ended December 31,		
	2012	**2011**	**2010**
Cash flows from operating activities:			
Net income (loss)	$ 64,707	$ 7,872	$ (69,142)
Less: Income from discontinued operations, net of income taxes	73,047	8,296	(1,467)
Loss from continuing operations, net of income taxes	(8,340)	(424)	(67,675)
Adjustments to reconcile net loss from continuing operations to net cash provided by (used in) operating activities:			
Depreciation	8,513	6,591	5,379
Amortization of intangibles	3,957	3,376	2,522
Amortization of deferred financing costs	1,261	1,055	1,813
Change in deferred income tax	(4)	1,153	47,333
Compensation under stock-based compensation plans	6,122	4,467	3,320
Loss on disposal of fixed assets	156	201	285
Changes in assets and liabilities, net of acquired business:			
Receivables, net of bad debt expense	101,230	(31,690)	(4,321)
Inventory	(15,249)	(2,497)	(1,196)
Prepaid expenses and other assets	3,726	11,211	(19,284)
Accounts payable	(48,200)	(1,659)	2,944
Claims payable	(4,354)	8,729	(1,030)
Amounts due to plan sponsors	(7,046)	5,437	6,079
Accrued interest	(22)	59	5,766
Accrued expenses and other liabilities	8,112	(2,945)	(15,494)
Net cash provided by (used in) operating activities from continuing operations	49,862	3,064	(33,559)
Net cash (used in) provided by operating activities from discontinued operations	(22,978)	23,905	12,140
Net cash provided by (used in) operating activities	26,884	26,969	(21,419)
Cash flows from investing activities:			
Purchases of property and equipment, net	(10,986)	(7,853)	(6,730)
Cash consideration paid for asset acquisitions	(43,046)	(463)	—
Cash consideration paid to CHS, net of cash acquired	—	—	(92,464)
Cash consideration paid to DS Pharmacy	(2,935)	—	(4,969)
Cash consideration paid for unconsolidated affiliate, net of cash acquired	(10,652)	—	—
Net cash used in investing activities from continuing operations	(67,619)	(8,316)	(104,163)
Net cash provided by (used in) investing activities from discontinued operations	161,499	(1,591)	(4,120)
Net cash provided by (used in) investing activities	93,880	(9,907)	(108,283)
Cash flows from financing activities:			
Cash consideration paid for Option Health earn-out	—	—	(1,000)
Proceeds from new credit facility, net of fees paid to issuers	—	—	319,000
Borrowings on line of credit	1,244,050	1,773,644	407,277
Repayments on line of credit	(1,307,872)	(1,791,058)	(356,430)
Repayments of capital leases	(3,278)	(2,635)	(348)
Principal payments on CHS long-term debt, paid at closing	—	—	(128,952)
Principal payments on long-term debt	—	—	(100,000)
Repayment of note payable	—	—	(2,250)
Deferred and other financing costs	—	(22)	(11,583)
Net proceeds from exercise of employee stock compensation plans	8,611	3,198	4,116
Surrender of stock to satisfy minimum tax withholding	(174)	(189)	(128)
Net cash (used in) provided by financing activities from continuing operations	(58,663)	(17,062)	129,702
Net cash provided by financing activities from discontinued operations	—	—	—
Net cash (used in) provided by financing activities	(58,663)	(17,062)	129,702

Net change in cash and cash equivalents	62,101	—	—
Cash and cash equivalents - beginning of period	—	—	—
Cash and cash equivalents - end of period	$ 62,101	$ —	$ —
DISCLOSURE OF CASH FLOW INFORMATION:			
Cash paid during the period for interest	$ 25,589	$ 27,528	$ 20,116
Cash paid during the period for income taxes	$ 3,137	$ 1,042	$ 2,565
DISCLOSURE OF NON-CASH TRANSACTIONS:			
Capital lease obligations incurred to acquire property and equipment	$ 20	$ 6,631	$ 671

See accompanying Notes to the Consolidated Financial Statements.

NOTE 1-- NATURE OF BUSINESS

Corporate Organization and Business

BioScrip, Inc. and subsidiaries (the “Company” or “BioScrip”) is a national provider of home infusion and other home care services and pharmacy benefit management ("PBM") services that partners with patients, physicians, hospitals, healthcare payors and pharmaceutical manufacturers to provide clinical management solutions and the delivery of cost-effective access to prescription medications and home health services. The Company's services are designed to improve clinical outcomes to patients with chronic and acute healthcare conditions while controlling overall healthcare costs.

As a result of the Company entering into a purchase agreement on February 1, 2012 with respect to the sale of its traditional and specialty pharmacy mail operations and community retail pharmacy stores (see Note 3), the Company reevaluated its segments in accordance with the provisions of Financial Accounting Standards Board ("FASB")Accounting Standards Codification (“ASC”) Topic 280, *Segment Reporting* (“ASC 280”). Based on its review, the Company changed its operating and reportable segments from “Infusion/Home Health Services” and “Pharmacy Services” to its new operating and reportable segments: “Infusion Services", "Home Health Services” and “PBM Services”. These three new operating and reportable segments reflect how the Company's chief operating decision maker reviews the Company's results in terms of allocating resources and assessing performance.

The Infusion Services operating and reportable segment provides services consisting of home infusion therapy, respiratory therapy and the provision of durable medical equipment, products and services. Infusion services include the dispensing and administering of infusion-based drugs, which typically requires additional nursing and clinical management services, equipment to administer the correct dosage and patient training designed to improve patient outcomes. Home infusion services also include the dispensing of self-injectible therapies.

The Home Health Services operating and reportable segment provides services that include the provision of skilled nursing services and therapy visits, private duty nursing services, hospice services, rehabilitation services and medical social services to patients primarily in their home.

The PBM Services operating and reportable segment consists of integrated PBM services, which primarily consists of discount card programs. The discount card programs provide a cost effective alternative for individuals who may be uninsured, underinsured or may have restrictive coverage that disallows reimbursement for certain medications. Under these discount programs, individuals who present a discount card at one of our participating network pharmacies receive prescription medications at a discounted price compared to the retail price. In addition, in our capacity as a pharmacy benefit manager, we have fully funded prescription benefit programs where we reimburse our network pharmacies and third party payors in turn reimburse us based on Medi-Span reported pricing for those claims fulfilled for their plan participants.

The Company's platform provides broad service capabilities and the ability to deliver clinical management services that offer patients a high-touch, community-based and home-based care environment. The Company's core services are provided in coordination with, and under the direction of, a patient's physician. The Company's home health professionals, including pharmacists, nurses, respiratory therapists and physical therapists, work with the physician to develop a plan of care suited to the patient's specific needs. Whether in the home, physician office, ambulatory infusion center or other alternate sites of care, the Company provides products, services and condition-specific clinical management programs tailored to improve the care of individuals with complex health conditions such as gastrointestinal abnormalities, infectious diseases, cancer, pain management, multiple sclerosis, organ transplants, bleeding disorders, rheumatoid arthritis, immune deficiencies and heart failure.

Basis of Presentation

The Company’s Consolidated Financial Statements have been prepared in accordance with U.S. generally accepted accounting principles (“GAAP”).

Reclassifications

Certain prior period amounts have been reclassified to conform to the current year presentation due primarily to the new segment structure.

NOTE 2-- SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Consolidation

The Consolidated Financial Statements include the accounts of the Company and its wholly-owned subsidiaries. All significant intercompany accounts and transactions have been eliminated in consolidation.

Variable Interest Entity

In accordance with the applicable accounting guidance for the consolidation of variable interest entities, the Company analyzes its variable interests to determine if an entity in which it has a variable interest is a variable interest entity. The Company's analysis includes both quantitative and qualitative reviews. The Company bases its quantitative analysis on the forecasted cash flows of the entity and its qualitative analysis on its review of the design of the entity, its organizational structure, including decision making ability, and relevant financial agreements. The Company also uses its qualitative analysis to determine if it must consolidate a variable interest entity as its primary beneficiary.

The Company has an affiliate equity investment in a variable interest entity that has developed a platform that facilitates the flow, management and sharing of vital health and medical information with stakeholders across the healthcare ecosystem. The Company concluded that the entity is a variable interest entity because the equity investment at risk is not sufficient to permit the entity to finance its activities without additional support from other parties. The Company has determined that it is not the primary beneficiary as power to direct the activities that most significantly impact economic performance of the entity is held by another stakeholder, and therefore does not consolidate the entity. The Company recorded its initial net investment in the variable interest entity of $6.9 million and subsequent working capital contributions in the investments in and advances to unconsolidated affiliate line on the accompanying Consolidated Balance Sheets using the equity method of accounting. The maximum exposure to loss as a result of its involvement with the variable interest entity is $19.0 million, which represents the current book value and additional commitments made to fund future potential working capital needs.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make certain estimates and assumptions. These estimates and assumptions affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

Cash and Cash Equivalents

Highly liquid investments with a maturity of three months or less when purchased are classified as cash equivalents.

Receivables

Receivables include amounts due from government sources, such as Medicare and Medicaid programs, PBMs, Managed Care Organizations and other commercial insurance (“Plan Sponsors”); amounts due from patient co-payments; amounts due from pharmaceutical manufacturers for rebates; and service fees resulting from the distribution of certain drugs through retail pharmacies.

Allowance for Doubtful Accounts

The allowance for doubtful accounts is based on estimates of losses related to receivable balances. The risk of collection varies based upon the product, the payor (commercial health insurance and government) and the patient’s ability to pay the amounts not reimbursed by the payor. We estimate the allowance for doubtful accounts based upon several factors including the age of the outstanding receivables, the historical experience of collections, adjusting for current economic conditions and, in some cases, evaluating specific customer accounts for the ability to pay. Collection agencies are employed and legal action is taken when we determine that taking collection actions is reasonable relative to the probability of receiving payment on amounts owed. Management judgment is used to assess the collectability of accounts and the economic ability of our customers to pay. Judgment is also used to assess trends in collections and the effects of systems and business process changes on our expected collection rates. The Company reviews the estimation process quarterly and makes changes to the estimates as necessary. When it is determined that a customer account is uncollectible, that balance is written off against the existing allowance.

The following table sets forth the aging of our December 31, 2012 and December 31, 2011 net accounts receivable (net of allowance for contractual adjustments and prior to allowance for doubtful accounts), aged based on date of service and categorized based on the three primary overall types of accounts receivable characteristics (in thousands):

As of December 31, 2012

	0 - 180 days	Over 180 days	Total
Government	$ 41,124	$ 2,744	$ 43,868
Commercial	75,389	26,137	101,526
Patient	1,784	4,137	5,921
	$ 118,297	$ 33,018	151,315
Allowance for doubtful accounts			(22,212)
Total			$ 129,103

As of December 31, 2011

	0 - 180 days	Over 180 days	Total
Government (1)	$ 36,498	$ 5,477	$ 41,975
Commercial (1)(2)	175,730	21,504	197,234
Patient	6,348	2,583	8,931
	$ 218,576	$ 29,564	248,140
Allowance for doubtful accounts			(22,728)
Total			$ 225,412

(1) Government includes $2.5 million and commercial includes $0.9 million of accounts receivable and allowance for doubtful accounts related to the termination of the Centers for Medicare & Medicaid Competitive Acquisition Program (“CAP”) contract as of December 31, 2011.

(2) In prior years, commercial included one pharmacy network agreement under which various Plan Sponsors were served and which Plan Sponsors account for, in the aggregate, receivables that accounted for 21% of the Company's total accounts receivable balance as of December 31, 2011. This contract was transferred to Walgreen Co. as part of the Pharmacy Services Asset Sale. At December 31, 2012 there was no remaining balance associated with this Pharmacy Services contract.

(3) Commercial balances declined $95.7 million during the year ended December 31, 2012 due to the collection of outstanding Pharmacy related balances retained following the sale of the related operations. The commercial balance greater than 180 days old increased by $4.6 million primarily because of the remaining Pharmacy related balances that have not yet been collected. At December 31, 2012 the remaining Pharmacy Services gross accounts receivable balance was $12.8 million and the related allowance for doubtful accounts was $8.0 million.

Allowance for Contractual Discounts

The Company is reimbursed by Plan Sponsors for products and services the Company provides. Payments for medications and services covered by Plan Sponsors are generally less than billed charges. The Company monitors revenue and receivables from Plan Sponsors on an account-specific basis and records an estimated contractual allowance for certain revenue and receivable balances at the revenue recognition date to properly account for anticipated differences between amounts billed and amounts reimbursed. Accordingly, the total revenue and receivables reported in our financial statements are recorded at the amounts expected to be received from these payors. Since billing functions for a portion of the Company's revenue are largely computerized, which enables on-line adjudication (i.e., submitting charges to third-party payors electronically, with simultaneous feedback of the amount the primary insurance plan expects to pay) at the time of sale to record net revenue, exposure to estimating contractual allowance adjustments is limited. For the remaining portion of the Company's revenue, the contractual allowance is estimated based on several criteria, including unbilled and/or initially rejected claims, historical trends based on actual claims paid, current contract and reimbursement terms, and changes in customer base and payor/product mix. Contractual allowance estimates are adjusted to actual amounts as cash is received and claims are settled. The Company does not believe these changes in estimates are material.

Inventory

Inventory is recorded at the lower of cost or market. Cost is determined using the first-in, first-out method. Inventory consists principally of purchased prescription drugs and related supplies. Included in inventory is a reserve for inventory waste and obsolescence.

Property and Equipment

Property and equipment is stated at cost less accumulated depreciation. Depreciation is calculated using the straight-line method over the estimated useful lives of assets. The estimated useful lives of the Company’s assets are as follows:

Asset	Useful Life
Computer hardware and software	3 - 5 years
Office equipment	3 - 5 years
Vehicles	5 years
Medical equipment	2 - 5 years
Furniture and fixtures	5 - 7 years

Leasehold improvements and leased assets under capital leases are depreciated using a straight-line basis over the related lease term or estimated useful life of the assets, whichever is less. The cost and related accumulated depreciation of assets sold or retired are removed from the accounts with the gain or loss, if applicable, recorded in the statement of operations. Maintenance and repair costs are expensed as incurred.

Costs relating to the development of software for internal purposes are charged to expense until technological feasibility is established in accordance with FASB ASC Topic 350, *Intangibles – Goodwill and Other* (“ASC 350”). Thereafter, the remaining software production costs up to the date placed into production are capitalized and included as Property and Equipment. Depreciation of the capitalized amounts commences on the date the asset is ready for its intended use and is calculated using the straight-line method over the estimated useful life of the software.

Amounts due to Plan Sponsors

Amounts due to Plan Sponsors primarily represent payments received from Plan Sponsors in excess of the contractually required reimbursement. These amounts are refunded to Plan Sponsors. These payables also include the sharing of manufacturers’ rebates with Plan Sponsors.

Rebates

Manufacturers’ rebates are part of each of the Company’s segments. Rebates are generally volume-based incentives that are earned and recorded upon purchase of the inventory. Rebates are recorded as a reduction of both inventory and cost of goods sold.

PBM rebates are recorded on historical PBM results and trends and are revised on a regular basis depending on the Company's latest forecasts, as well as information received from rebate sources. Should actual results differ, adjustments will be recorded in future earnings when the adjustment becomes known. In some instances, rebate payments are shared with the Company's Plan Sponsors. PBM rebates earned by the Company are recorded as a reduction of cost of goods sold. PBM rebates shared with clients are recorded as a reduction of revenue consistent with the sales incentive provisions of ASC Topic 605, *Revenue Recognition* ("ASC 605").

Revenue Recognition

The Company generates revenue principally through the sale of prescription drugs and nursing services. Prescription drugs are dispensed either through a pharmacy participating in the Company's pharmacy network or a pharmacy owned by the Company. Fee-for-service agreements include: (i) pharmacy agreements, where we dispense prescription medications through the Company's pharmacy facilities and (ii) PBM agreements, where prescription medications are dispensed through pharmacies participating in the Company's retail pharmacy network.

FASB ASC Subtopic 605-25, *Revenue Recognition: Multiple-Element Arrangements* ("ASC 605-25"), addresses situations in which there are multiple deliverables under one revenue arrangement with a customer and provides guidance in determining whether multiple deliverables should be recognized separately or in combination. The Company provides a variety of therapies to patients. For infusion-related therapies, the Company frequently provides multiple deliverables of drugs and related nursing services. After applying the criteria from ASC 605-25, the Company concluded that separate units of accounting exist in revenue arrangements with multiple deliverables. Drug revenue is recognized at the time the drug is shipped, and nursing revenue is recognized on the date of service. The Company allocates revenue consideration based on the relative fair value as determined by the Company's best estimate of selling price to separate the revenue where there are multiple deliverables under one revenue arrangement.

Revenue generated under PBM agreements is classified as either gross or net based on whether the Company is acting as a principal or an agent in the fulfillment of prescriptions through our retail pharmacy network. When the Company independently has a contractual obligation to pay a network pharmacy provider for benefits provided to its Plan Sponsors' members, and therefore is the "primary obligor" as defined in FASB ASC 605, *Revenue Recognition* ("ASC 605") the Company includes payments (which include the drug ingredient cost) from these Plan Sponsors as revenue and payments to the network pharmacy providers as cost of revenue. These transactions require the Company to pay network pharmacy providers, assume credit risk of Plan Sponsors and act as a principal. If the Company merely acts as an agent, and consequently administers Plan Sponsors' network pharmacy contracts, the Company does not have the primary obligation to pay the network pharmacy and assume credit risk, and as such, records only the administrative fees (and not the drug ingredient cost) as revenue.

Revenue generated under discount card agreements is recognized when the discount card is used to purchase a prescription drug. The revenue is based on contractual rates per transaction. Broker fees associated with the marketing of the discount cards are incurred and recognized at the time the card is used and classified as selling, general and administrative expense in the Consolidated Statements of Operations.

In the Company's Infusion Services and Home Health Services segments, the Company also recognizes nursing revenue as the estimated net realizable amounts from patients and Plan Sponsors for services rendered and products provided. This revenue is recognized as the treatment plan is administered to the patient and is recorded at amounts estimated to be received under reimbursement or payment arrangements with payors.

Under the Medicare Prospective Payment System program, net revenue is recorded based on a reimbursement rate which varies based on the severity of the patient's condition, service needs and certain other factors. Revenue is recognized ratably over a 60-day episode period and is subject to adjustment during this period if there are significant changes in the patient's condition during the treatment period or if the patient is discharged but readmitted to another agency within the same 60-day episodic period. Medicare cash receipts under the prospective payment system are initially recognized as deferred revenue and are subsequently recognized as revenue over the 60-day episode period. The process for recognizing revenue under the Medicare program is based on certain assumptions and judgments, the appropriateness of the clinical assessment of each patient at the time of certification, and the level of adjustments to the fixed reimbursement rate relating to patients who receive a limited number of visits, have significant changes in condition or are subject to certain other factors during the episode.

Cost of Revenue

Cost of revenue includes the costs of prescription medications, pharmacy claims, fees paid to pharmacies, shipping and other direct and indirect costs associated with pharmacy management and administration, claims processing operations, and nursing

services, offset by volume and prompt pay discounts received from pharmaceutical manufacturers and distributors and total manufacturer rebates.

Intangible Assets

The Company amortizes intangible assets with a finite useful life over its estimated useful life, and an intangible asset with an indefinite useful life is not amortized. Trademarks, trade names, customer relationships and license and marketing related intangibles are amortized on a straight line basis, which approximates the benefit provided by the utilization of the assets.

Impairment of Long Lived Assets

The Company evaluates whether events and circumstances have occurred that indicate the remaining estimated useful life of long lived assets, including intangible assets, may warrant revision or that the remaining balance of an asset may not be recoverable. The measurement of possible impairment is based on the ability to recover the balance of assets from expected future operating cash flows on an undiscounted basis. Impairment losses, if any, are determined based on the fair value of the asset, calculated as the present value of related cash flows using discount rates that reflect the inherent risk of the underlying business.

Goodwill

In accordance with ASC 350, the Company evaluates goodwill for impairment on an annual basis and whenever events or circumstances exist that indicate that the carrying value of goodwill may no longer be recoverable. The impairment evaluation is based on a two-step process. The first step compares the fair value of a reporting unit with its carrying amount, including goodwill. If the first step indicates that the fair value of the reporting unit is less than its carrying amount, the second step must be performed which determines the implied fair value of reporting unit goodwill. The measurement of possible impairment is based upon the comparison of the implied fair value of reporting unit to its carrying value.

Fair Value Measurements

Fair value measurements are categorized into one of three levels based on the lowest level of significant input used: Level 1 (unadjusted quoted prices in active markets); Level 2 (observable market inputs available at the measurement date, other than quoted prices included in Level 1); and Level 3 (unobservable inputs that cannot be corroborated by observable market data).

Lease Accounting

The Company accounts for operating leasing transactions by recording rent expense on a straight-line basis over the expected life of the lease, starting on the date it gains possession of leased property. The Company includes tenant improvement allowances and rent holidays received from landlords, and the effect of any rent escalation clauses, as adjustments to straight-line rent expense over the expected life of the lease.

Capital lease transactions are reflected as a liability at the inception of the lease based on the present value of the minimum lease payments or, if lower, the fair value of the property. Assets recorded under capital leases are depreciated in the same manner as owned property.

Income Taxes

As part of the process of preparing the Company's Consolidated Financial Statements, management is required to estimate income taxes in each of the jurisdictions in which it operates. The Company accounts for income taxes under ASC Topic 740, *Income Taxes* ("ASC 740"). ASC 740 requires the use of the asset and liability method of accounting for income taxes. Under this method, deferred taxes are determined by calculating the future tax consequences attributable to differences between the financial accounting and tax bases of existing assets and liabilities. A valuation allowance is recorded against deferred tax assets when, in the opinion of management, it is more likely than not that the Company will not be able to realize the benefit from its deferred tax assets.

The Company files income tax returns, including returns for its subsidiaries, as prescribed by Federal tax laws and the tax laws of the state and local jurisdictions in which it operates. The Company's uncertain tax positions are related to tax years that remain subject to examination and are recognized in the Consolidated Financial Statements when the recognition threshold and

measurement attributes of ASC 740 are met. Interest and penalties related to unrecognized tax benefits are recorded as income tax expense.

Financial Instruments

The Company's financial instruments consist mainly of cash and cash equivalents, receivables, accounts payable, accrued interest and its line of credit. The carrying amounts of cash and cash equivalents, receivables, accounts payable, accrued interest and its line of credit approximate fair value due to their fully liquid or short-term nature. The estimated fair value of the Company's senior unsecured notes, which is calculated using level 1 inputs and was based on current market rates for debt of the same risk and maturities, was more than the carrying value by approximately $42.1 million on December 31, 2012.

Accounting for Stock-Based Compensation

The Company accounts for stock-based employee compensation expense under the provisions of ASC Topic 718, *Compensation – Stock Compensation* ("ASC 718"). At December 31, 2012, the Company has two stock-based employee compensation plans pursuant to which incentive stock options ("ISOs"), non-qualified stock options ("NQSOs"), stock appreciation rights ("SARs"), restricted stock, performance shares and performance units may be granted to employees and non-employee directors. Option and stock awards are typically settled by issuing authorized but unissued shares of the Company.

The Company estimates the fair value of each stock option award on the measurement date using a binomial option-pricing model. The fair value of the award is amortized to expense on a straight line basis over the requisite service period. The Company expenses restricted stock awards based on vesting requirements, including time elapsed, market conditions and/or performance conditions. Because of these requirements, the weighted average period for which the expense is recognized varies. The Company expenses stock appreciation right awards ("SARs") based on vesting requirements. In addition, because they are settled with cash, the fair value of the SAR awards are revalued on a quarterly basis.

Income (Loss) Per Share

The following table sets forth the computation of basic and diluted income (loss) per common share (in thousands, except for per share amounts):

	Year Ended December 31,		
	2012	**2011**	**2010**
Numerator:			
Loss from continuing operations, net of income taxes	$ (8,340)	$ (424)	$ (67,675)
Income from discontinued operations, net of income taxes	73,047	8,296	(1,467)
Net income (loss)	$ 64,707	$ 7,872	$ (69,142)
Denominator - Basic:			
Weighted average number of common shares outstanding	56,239	54,505	50,374
Basic Earnings Per Common Share:			
Basic loss from continuing operations	$ (0.15)	$ (0.01)	$ (1.34)
Basic income from discontinued operations	1.30	0.15	(0.03)
Basic income (loss) per common share	$ 1.15	$ 0.14	$ (1.37)
Denominator - Diluted:			
Weighted average number of common shares outstanding	56,239	54,505	50,374
Common share equivalents of outstanding stock options and restricted awards	—	—	—
Total diluted shares outstanding	56,239	54,505	50,374
Diluted Earnings Per Common Share:			
Diluted loss from continuing operations	$ (0.15)	$ (0.01)	$ (1.34)
Diluted income from discontinued operations	1.30	0.15	(0.03)
Diluted income (loss) per common share	$ 1.15	$ 0.14	$ (1.37)

The computation of diluted shares for the years ended December 31, 2012, December 31, 2011 and December 31, 2010 excludes the effect of 3.4 million warrants with an exercise price of $10 issued in connection with the acquisition of CHS as their

inclusion would be anti-dilutive to earning per common share from continuing operations. In addition, the computation of diluted shares for the years ended December 31, 2012, December 31, 2011 and 2010 excludes the effect of 2.8 million, 4.6 million and 7.3 million, respectively, of other common stock equivalents as their inclusion would be anti-dilutive to earning per common share from continuing operations. ASC Topic 260, *Earnings Per Share*, requires that income from continuing operations be used as the basis for determining whether the inclusion of common stock equivalents would be anti-dilutive.

Recent Accounting Pronouncements

In May 2011, the FASB issued Accounting Standards Update ("ASU") 2011-04, *Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRS* (“ASU 2011-04”). ASU 2011-04 generally aligns the principles for fair value measurements and the related disclosure requirements under U.S. GAAP and International Financial Reporting Standards. From a U.S. GAAP perspective, the amendments are largely clarifications, but some could have a significant effect on certain companies. A number of new disclosures also are required. Except for certain disclosures, the guidance applies to public and nonpublic companies and is to be applied prospectively. The Company adopted ASU 2011-04 on January 1, 2012. The adoption of this statement did not have a material effect on the Company's Consolidated Financial Statements.

In September 2011, the FASB issued ASU 2011-08, *Testing Goodwill for Impairment* (“ASU 2011-08”). ASU 2011-08 allows an entity to first assess qualitative factors to determine whether it is necessary to perform the two-step quantitative goodwill impairment test. Under these amendments, an entity would not be required to calculate the fair value of a reporting unit unless the entity determines, based on a qualitative assessment, that it is more likely than not that its fair value is less than its carrying amount. The amendments include a number of events and circumstances for an entity to consider in conducting the qualitative assessment. The amendments were effective for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011. The adoption of this statement did not have a material effect on the Company's Consolidated Financial Statements.

In July 2012, the FASB issued ASU 2012-02, *Testing Indefinite-Lived Intangible Assets for Impairment (*“ASU 2012-02”). ASU 2012-02 allows an entity to first assess qualitative factors to determine whether it is necessary to perform a quantitative impairment test. Under this amendment, an entity would not be required to calculate the fair value of the indefinite-lived intangible asset unless the entity determines, based on a qualitative assessment, that it is more likely than not that its fair value is less than its carrying amount. The amendments include a number of events and circumstances for an entity to consider in conducting the qualitative assessment. ASU 2012-02 is effective for annual and interim impairment tests performed for fiscal years beginning after September 15, 2012. Early adoption is permitted. The Company is currently evaluating the impact of adopting ASU 2012-02 on its Unaudited Consolidated Financial Statements.

NOTE 3-- DISCONTINUED OPERATIONS

On February 1, 2012, the Company entered into a Community Pharmacy and Mail Business Purchase Agreement (the “Asset Purchase Agreement”) by and among Walgreen Co. and certain subsidiaries (collectively, the "Buyers") and the Company and certain subsidiaries (collectively, the "Sellers") with respect to the sale of certain assets, rights and properties (the “Pharmacy Services Asset Sale”) relating to the Sellers' traditional and specialty pharmacy mail operations and community retail pharmacy stores.

Pursuant to the terms of the Asset Purchase Agreement, the Company received a total purchase price of approximately $173.8 million during 2012, including approximately $158.8 million at closing on May 4, 2012 (which included monies received for the inventories on hand attributable to the operations subject to the Pharmacy Services Asset Sale), and subsequent additional purchase price payments of $15.0 million based on events related to the Buyer's retention of certain business after closing. Similarly, the Company may be required to refund up to approximately $6.4 million of the cash received to the Buyers under certain circumstances. Any gain associated with this contingency will be recorded when the final amount retained or refunded is known. The $173.8 million purchase price excluded all accounts receivable and working capital liabilities relating to the operations subject to the sale, which were retained by the Company. Approximately $50.8 million of these net assets were converted to cash subsequent to the sale. Approximately $4.8 million of these net assets remained at December 31, 2012.

As a result of the Pharmacy Services Asset Sale, the Company recognized a pretax gain of $115.0 million, net of transaction costs of $5.6 million during the year ended December 31, 2012. The Company also recognized approximately $13.4 million of impairment costs, employee severance and other benefit-related costs, and facility-related costs as a result of the transaction in the year ended December 31, 2012, resulting in a net gain of approximately $101.6 million. See Note 7 - Property and Equipment, for further information on the impairment. The impairment costs, employee severance and other benefit-related costs, facility-

related costs, and other one-time charges are included in income (loss) from discontinued operations, net of income taxes on the Consolidated Statements of Operations. As of December 31, 2012, there were accruals of $0.1 million related to these costs in accrued expenses and other current liabilities on the Consolidated Balance Sheets. The company allocated tax expense of $6.1 million to discontinued operations' pre-tax income of $79.2 million for the year ended December 31, 2012. The allocated $6.1 million tax expense is less than the statutory rate because the Company used $24.1 million of deferred tax assets that previously had a full valuation allowance. The use of the deferred tax assets significantly reduced the amount of gain that was subject to federal and state income tax.

The accrual activity consisted of the following (in thousands):

	Impairment Costs	Employee Severance and Other Benefits	Facility-Related Costs	Other Costs	Total
Liability balance as of December 31, 2011	$ —	$ —	$ —	$ —	$ —
Expenses	5,839	5,279	1,071	1,198	13,387
Cash payments	—	(5,234)	(82)	(3,133)	(8,449)
Non-cash charges	(5,839)	—	(989)	2,024	(4,804)
Liability balance as of December 31, 2012	$ —	$ 45	$ —	$ 89	$ 134

In addition, the Company and its subsidiaries and certain subsidiaries of the Buyers entered into an agreement concurrently with the Asset Purchase Agreement which provided that BioScrip ceased to be the sole fulfillment pharmacy for customers who came through the drugstore.com website. The agreement provided for a cash payment of $3.0 million to the Company and the payment of $2.9 million to the Buyers related to contingent consideration from the Company's 2010 acquisition of the prescription pharmacy business of DS Pharmacy, Inc. both of which occurred during the three months ended March 31, 2012.

The transaction included the sale of 27 community pharmacy locations and certain assets of three community pharmacy locations and three traditional and specialty mail service operations, which constituted all of the Company's operations in the community pharmacy and mail order lines of business. Two mail order locations which were not transferred as part of the Pharmacy Services Asset Sale have been redeployed to provide infusion pharmacy services. The assets of the components of the businesses that were transferred are included in discontinued operations on the accompanying Consolidated Balance Sheets at December 31, 2011. On May 4, 2012, the carrying value of the assets included in the Pharmacy Services Asset Sale was as follows (in thousands):

Inventory	$ 30,560
Prepaid expenses and other current assets	299
Total current assets	30,859
Property and equipment, net	1,592
Goodwill	11,754
Intangible assets, net	2,503
Total assets	$ 46,708

During the three months ended June 30, 2012, as a result of the divestiture process, the Company's management commenced an assessment of the Company's continuing operations in order to align its corporate structure with its remaining operations. As part of these efforts, the Company has incurred and expects to incur additional charges such as the write down of certain long-lived assets, employee severance, other restructuring type charges, temporary redundant expenses, potential cash bonus payments and potential accelerated payments or terminated costs for certain of its contractual obligations, which may impact the Company's future Consolidated Financial Statements.

The operating results of the traditional and specialty pharmacy mail operations and community pharmacies for the years ended December 31, 2012, 2011 and 2010 are summarized below. These results include costs directly attributable to the components of the businesses which were divested. Operating expense includes bad debt expense of $12.9 million, $7.2 million and $12.1 million for the years ended December 31, 2012, 2011 and 2010, respectively associated with receivables retained from the divested business. Interest expense of $0.8 million, $2.8 million and $4.1 million were allocated to discontinued operations for the years ended December 31, 2012, 2011, and 2010, respectively, based upon the portion of the borrowing base associated with discontinue operations. Income tax expense of $6.1 million, $0.9 million and $1.0 million for the years ended December 31, 2012, 2011 and 2010, respectively have also been allocated to discontinued operations. These adjustments have been made for all periods presented. Depreciation expense was no longer incurred on fixed assets included in the disposal group as of February 1, 2012, the date the Company entered into the Asset Purchase Agreement.

Discontinued Operations Results
(in thousands)

	Years Ended December 31,		
	2012	2011	2010
Revenue	$ 466,747	$ 1,263,520	$ 1,207,916
Gross profit	29,844	96,888	99,881
Operating expense	51,543	84,940	91,627
Loss on extinguishment of debt	—	—	6,607
Gain on sale, before income taxes	101,624	—	—
Income from discontinued operations, net of income taxes	$ 73,047	$ 8,296	$ (1,467)

NOTE 4-- ACQUISITIONS

InfuScience, Inc.

On July 31, 2012, the Company acquired 100 percent of InfuScience, Inc. (“InfuScience”) for a cash payment of $38.3 million. The purchase price could increase to $41.4 million based on the results of operations during the 24 month period following the closing. InfuScience acquires, develops and operates businesses providing alternate site infusion pharmacy services. The contingent consideration of $3.0 million remains in an escrow account at December 31, 2012. It is recorded at fair value on a recurring basis using level 3 inputs using discounted future cash flows. Through this acquisition BioScrip has added five infusion centers located in Eagan, Minnesota; Omaha, Nebraska; Chantilly, Virginia; Charleston, South Carolina; and Savannah, Georgia. As of December 31, 2012 there is a liability of $3.1 million recorded for the potential increase in purchase price.

Assets and Liabilities Acquired

The transaction has been accounted for as a business combination under the acquisition method of accounting. The following table summarizes the estimated fair values of the assets acquired and liabilities assumed as of the acquisition date. Due to the timing of this acquisition, these amounts are provisional and subject to change. The Company will finalize these amounts as it obtains the information necessary to complete the measurement process. Any changes resulting from facts and circumstances that existed as of the acquisition date may result in retrospective adjustments to the provisional amounts recognized at the acquisition date. These changes could be significant. The Company will finalize these amounts no later than one year from the acquisition date.

	Amounts Recognized as of Acquisition Date (in thousands)
Cash	$ 23
Accounts receivable	4,938
Inventories	586
Other current assets	371
Property and equipment	751
Identifiable intangible assets	400
Other non-current assets	349
Current liabilities	(4,422)
Total identifiable net assets	2,996
Goodwill	38,423
Total assets and total consideration transferred	$ 41,419

The excess of the purchase price over the fair value of the tangible and identifiable intangible assets acquired and liabilities assumed in the acquisition was allocated to goodwill. The value of goodwill represented the value the Company expected to be created by combining the various operations of InfuScience with the Company's operations, including the ability to cross-sell their respective services on a national basis with an expanded footprint in home infusion. The InfuScience acquisition is included in the Company's Infusion Services segment. Of the goodwill recorded in the InfuScience acquisition, $7.7 million was deductible for tax purposes.

Intangible Assets

The following table summarizes the identifiable intangible assets acquired (in thousands):

	Weighted-Average Useful Lives (Months)	Amounts Recognized as of Acquisition Date (in thousands)
InfuScience customer relationships	5	400
Total identifiable intangible assets acquired	5	$ 400

Impact of Acquisition on the Consolidated Financial Statements

The revenues of InfuScience for the period from the acquisition date to December 31, 2012 were $16.5 million, and the net loss was $0.2 million.

Expenses incurred to integrate InfuScience and other acquisitions are recorded in acquisitions and integration expenses and restructuring and other expenses. These costs include legal and financial advisory fees associated with acquisitions; integration costs to convert to common policies, procedures, and information systems; and, transitional costs such as training, redundant salaries, and retention bonuses for certain critical personnel.

DS Pharmacy, Inc.

On July 29, 2010, the Company acquired the prescription pharmacy business and assets of DS Pharmacy, Inc. (“DS Pharmacy”), a wholly-owned subsidiary of drugstore.com, inc. The acquisition provided the Company with an expanded presence in on-line pharmacy and a six year license of drugstore.com capabilities, trademarks and trade names. In connection with the acquisition, the Company and drugstore.com entered into a Transitional Services Agreement and a Services Agreement pursuant to which, for a period of six years following the closing of the acquisition, drugstore.com will provide the Company with marketing services. The Company paid $5.0 million in cash upon closing and an additional earn-out in cash based on the results of operations during the twelve month period following the closing. As of December 31, 2011 there was a liability of $2.9 million, which represented the estimated fair value of the earn-out payment included in accrued expenses and other current liabilities on the Consolidated Balance Sheets.

On February 1, 2012, the Company and its subsidiaries, and DS Pharmacy, Inc. and drugstore.com, inc., both then subsidiaries of Walgreens Parent, entered into an agreement providing that the Company will cease to be the sole fulfillment pharmacy for customers who come through the drugstore.com website. The Services Agreement with DS Pharmacy was terminated and the contingent consideration of $2.9 million was paid to DS Pharmacy.

During the year ended December 31, 2010, the Company incurred $0.7 million of integration related costs. These costs were primarily related to overtime and temporary wage costs incurred to secure prescriptions, verify insurance and enter customer information into the system as part of the DS Pharmacy acquisition and integration. The costs were recognized in the acquisition and integration expenses line of the Consolidated Statements of Operations.

Assets and Liabilities Acquired

The following table sets forth the fair value of the assets acquired and liabilities assumed as a result of the acquisition of DS Pharmacy (in thousands):

Inventory	$ 469	
Property and equipment	76	
Tangible assets acquired		$ 545
Intangible assets acquired		8,669
Total assets and total consideration		$ 9,214

Intangible Assets

The following table summarizes the identifiable intangible assets acquired (in thousands):

	Estimated Useful Life	Fair Value
Customer list	6 months	$ 270
Transitional services contract	1 year	1,040
License and marketing related intangibles	6 years	7,359
		$ 8,669

Critical Homecare Solutions Holdings, Inc.

On March 25, 2010, the Company acquired 100 percent of Critical Homecare Solutions Holdings, Inc. ("CHS"), a leading provider of comprehensive home infusion and home health services to patients suffering from acute and chronic conditions. CHS' home infusion business provides for the dispensing and administration of infusion pharmaceuticals, biopharmaceuticals, nutrients and related services and equipment to patients principally in the home. Its home nursing service operations provide nursing and therapy visits as well as private duty nursing services to patients in the home. The Company's acquisition of CHS added 35 infusion pharmacies servicing 22 states, including 16 ambulatory treatment centers, and 33 nursing locations to the Company's existing platform.

Consideration

The following table sets forth the consideration transferred in connection with the acquisition of CHS and the aggregate purchase price allocation as of March 25, 2010 (in thousands):

Fair value of equity consideration:		
BioScrip common stock issued (13.1 million shares)	$	91,614
BioScrip warrants issued (3.4 million warrants)		12,268
Rollover options (716,086 options)		2,802
Cash paid to CHS stockholders		99,626
Total consideration conveyed to CHS stockholders	$	206,310
Cash paid for merger related expenses incurred by CHS		14,566
Assumption and repayment of CHS debt		128,952
Total amounts paid to execute the merger of CHS	$	349,828

Assets and Liabilities Acquired

The following table sets forth the fair value of the assets acquired and liabilities assumed as a result of the acquisition of CHS (in thousands):

Cash and cash equivalents	$ 7,162	
Receivables	38,289	
Deferred taxes	6,228	
Other current assets	4,993	
Property and equipment	6,462	
Other assets	2,778	
Total assets acquired		65,912
Accounts payable	(3,334)	
Notes payable	(2,250)	
Amounts due to plan sponsors	(8,763)	
Accrued expenses and other current liabilities	(34,002)	
Deferred tax liabilities	(7,144)	
Total liabilities assumed		(55,493)
Tangible assets acquired, net		$ 10,419
Intangible assets acquired		25,200
Debt assumed		(128,952)
Goodwill		299,643
Total consideration conveyed to CHS stockholders		$ 206,310

The excess of the purchase price over the fair value of the tangible and identifiable intangible assets acquired and liabilities assumed in the acquisition was allocated to goodwill. The value of goodwill represented the value the Company expected to be created by combining the various operations of CHS with the Company's operations, including the ability to cross-sell their respective services on a national basis with an expanded footprint in home infusion. The CHS acquisition is included in the Company's Infusion/Home Health Services segment. Of the goodwill recorded in the CHS acquisition, $21.1 million was deductible for tax purposes.

Intangible Assets

The following table summarizes the identifiable intangible assets acquired (in thousands):

	Estimated Useful Life	Fair Value
Trademarks/trade names	various	$ 8,400
Infusion customer relationships	3 years	7,200
Certificates of need	indefinite	9,600
		$ 25,200

Impact of Acquisition on the Consolidated Financial Statements

The Company has consolidated the results of CHS with its own financial results for the periods beginning March 26, 2010. The impact of the inclusion of CHS' operating results from March 26, 2010 through December 31, 2010 with the Company's Consolidated Statements of Operations for the year ended December 31, 2010 included $207.2 million of revenue, $95.6 million of gross profit and $27.1 million of income from operations. Income from operations for CHS does not include the allocation of corporate expenses that were previously incurred by CHS and have since been transferred to BioScrip corporate expenses as part of the integration.

During the year ended December 31, 2010, the Company incurred $6.4 million of acquisition related costs, primarily related to legal, audit and financial advisory fees associated with the acquisition of CHS. The costs were recognized in the acquisition and integration expenses line of the Consolidated Statements of Operations.

Pro forma Results

The following table sets forth the unaudited pro forma combined results of operations as if the InfuScience acquisition had occurred on the same terms as of January 1, 2012 and 2011 and the DS Pharmacy and CHS acquisitions had occurred on the same terms as of January 1, 2010. Pro forma adjustments have been made related to amortization of intangibles, interest expense, and income tax expense. The pro forma financial information does not reflect revenue opportunities and cost savings which the Company expected to realize as a result of the acquisitions or estimates of charges related to the integration activity. The pro forma results for the years ended December 31, 2012, and 2010 include $4.0 million, and $5.9 million of acquisition related costs incurred by the Company, respectively. There were no acquisition and integration expenses in the year ended December 31, 2011. Amounts are in thousands, except for earnings per share.

	Years Ended December 31,		
	2012	2011	2010
Revenue	$ 685,295	$ 589,333	$ 491,476
Net loss from continuing operations	$ (9,030)	$ (1,523)	$ (67,095)
Basic loss per common share from continuing operations	$ (0.16)	$ (0.03)	$ (1.26)
Diluted loss per common share from continuing operations	$ (0.16)	$ (0.03)	$ (1.26)

The unaudited pro forma information is not necessarily indicative of what the Company's consolidated results of operations actually would have been had the InfuScience acquisition been completed on January 1, 2011 and had the DS Pharmacy and CHS acquisitions been completed on January 1, 2010. In addition, the unaudited pro forma information does not purport to project the future results of operations of the Company.

NOTE 5-- GOODWILL AND INTANGIBLE ASSETS

As a result of the Company entering into the Asset Purchase Agreement with respect to the Pharmacy Services Asset Sale, the Company reevaluated its operating and reportable segments. Based on its review, the Company changed its operating and reportable segments from “Infusion/Home Health Services” and “Pharmacy Services” to its new operating and reportable segments: “Infusion Services", "Home Health Services” and “PBM Services”. The Company has assigned goodwill to the new segments based on relative fair market value of the segment assets as measured by discounted future cash flows.

Goodwill consisted of the following as of December 31, 2012 and December 31, 2011 (in thousands):

	December 31, 2012	December 31, 2011
Infusion	$ 304,282	$ 265,859
Home Health Services	33,784	33,784
PBM Services	12,744	12,744
Total	$ 350,810	$ 312,387

There were no impairment losses related to goodwill or intangible assets recognized during the years ended December 31, 2012, 2011 and 2010.

The changes in the carrying amount of goodwill by operating and reportable segment for the years ended December 31, 2012 and 2011 are as follows (in thousands):

	Infusion Services	Home Health Services	PBM Services	Total
Balance as of December 31, 2010	$ 265,859	$ 33,784	$ 12,744	$ 312,387
Balance as of December 31, 2011	$ 265,859	$ 33,784	$ 12,744	$ 312,387
Goodwill related to InfuScience Acquisition	38,423	—	$ —	38,423
Balance as of December 31, 2012	$ 304,282	$ 33,784	$ 12,744	$ 350,810

Intangible assets consisted of the following as of December 31, 2012 and December 31, 2011 (in thousands):

		December 31, 2012		
	Estimated Useful Life	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Indefinite Lived Assets				
Certificates of need	indefinite	$ 9,600	$ —	$ 9,600
Nursing trademarks	indefinite	5,800	—	5,800
		15,400	—	15,400
Definite Lived Assets				
Infusion customer relationships	5 months - 3 years	9,300	(7,447)	1,853
Infusion trademarks	3 years	2,600	(2,407)	193
		11,900	(9,854)	2,046
		$ 27,300	$ (9,854)	$ 17,446

		December 31, 2011		
	Estimated Useful Life	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Indefinite Lived Assets				
Certificates of need	indefinite	$ 9,600	$ —	$ 9,600
Nursing trademarks	indefinite	5,800	—	5,800
		15,400	—	15,400
Definite Lived Assets				
Infusion customer relationships	6 months - 3 years	7,519	(4,359)	3,160
Infusion trademarks	3 years	2,600	(1,538)	1,062
		10,119	(5,897)	4,222
		$ 25,519	$ (5,897)	$ 19,622

Total amortization of intangible assets was $4.0 million, $3.4 million, and $2.5 million for the years ended December 31, 2012, 2011 and 2010, respectively. Amortization expense is expected to be the following (in thousands):

2013	$	2,046
2014 and beyond		—
Total	$	2,046

NOTE 6-- RESTRUCTURING AND OTHER EXPENSES

Restructuring and other expenses include expenses resulting from the execution of our strategic assessment and related restructuring plans, consisting primarily of employee severance and other benefit-related costs, third-party consulting costs, facility-related costs, and certain other costs. It also includes other transitional costs such as training, redundant salaries, and retention bonuses for certain critical personnel.

In the fourth quarter of 2010, the Company commenced a strategic assessment of its business and operations ("Restructuring Phase I"). This assessment focused on expanding revenue opportunities and lowering corporate overhead, including workforce and benefit reductions and facility rationalization. In addition to addressing corporate overhead, the strategic assessment examined the Company's market strengths and opportunities and compared the Company's position to that of its competitors. As a result of the assessment, the Company focused its growth on investments in the Infusion and Home Health Services segments and elected to pursue offers for its traditional and specialty pharmacy mail operations and community retail pharmacy stores. Accordingly, the Company consummated the Pharmacy Services Asset Sale relating to its traditional and specialty pharmacy mail operations and community retail pharmacy stores.

During the three months ended June 30, 2012, as a result of the divestiture process, the Company's management team commenced an assessment of the Company's continuing operations in order to align its corporate structure with its remaining operations ("Restructuring Phase II").

The Company anticipates that additional restructuring will occur and thus we may incur significant additional charges such as the write down of certain long-lived assets, employee severance, other restructuring type charges, temporary redundant expenses, potential cash bonus payments and potential accelerated payments or termination costs for certain of its contractual obligations, which impact the Company's future Consolidated Financial Statements.

Restructuring Phase I

As a result of the execution of the strategic assessment and related restructuring plan, the Company incurred restructuring expenses of approximately $0.2 million, $6.4 million and $3.5 million during the years ended December 31, 2012, December 31, 2011 and December 31, 2010, respectively. Restructuring expenses during the year ended December 31, 2012 consisted of approximately $0.3 million of third-party consulting costs offset by $0.1 million of facility-related expense adjustments. Restructuring expenses during the year ended December 31, 2011 consisted of approximately $2.9 million of third-party consulting costs and $1.9 million of severance and other benefit-related costs related to workforce reductions, and $1.6 million of facility-related costs. Restructuring expenses during year ended December 31, 2010 consisted of approximately $2.3 million of employee severance and other benefit-related costs related to workforce reductions and $1.2 million of third-party consulting costs.

Since inception of the strategic assessment and related restructuring plan, the Company has incurred approximately $10.1 million in total expenses, including $4.4 million of third-party consulting costs, $4.2 million of employee severance and other benefit-related costs related to workforce reductions, and $1.5 million of facility-related costs. A large part of the third-party consulting costs and other costs were associated with the analysis of our assets and their long-term strategic value relative to other assets in which we could invest. The result of this assessment process culminated in the Pharmacy Asset Sale (see Note 4 for further information on the Sale).

The restructuring costs are included in restructuring and other expenses on the Consolidated Statements of Operations. As of December 31, 2012, there are restructuring accruals of $1.0 million related to Phase I included in accrued expenses and other current liabilities and other non-current liabilities on the Consolidated Balance Sheets. The restructuring accrual activity consisted of the following (in thousands):

	Employee Severance and Other Benefits	Consulting Costs	Facility-Related Costs	Other Costs	Total
Liability balance as of December 31, 2011	$ 2,109	$ 50	$ 1,289	$ —	$ 3,448
Expenses	6	270	(61)	—	215
Cash payments	(1,952)	(300)	(387)	—	(2,639)
Liability balance as of December 31, 2012	$ 163	$ 20	$ 841	$ —	$ 1,024

Restructuring Phase II

As a result of Restructuring Phase II, the Company incurred restructuring expenses of approximately $1.9 million during the year ended December 31, 2012. The Company did not incur restructuring expense related to Phase II during 2011 or 2010. Restructuring expenses during the year ended December 31, 2012 consisted of approximately $1.1 million of employee severance and other benefit related costs associated with workforce reductions, $0.3 million of third-party consulting costs, and $0.5 million in other costs.

The restructuring costs are included in restructuring and other expenses on the Consolidated Statements of Operations. As of December 31, 2012, there are restructuring accruals of $0.7 million related to Phase II included in accrued expenses and other current liabilities and other non-current liabilities on the Consolidated Balance Sheets. The restructuring accrual activity consisted of the following (in thousands):

	Employee Severance and Other Benefits	Consulting Costs	Facility-Related Costs	Other Costs	Total
Liability balance as of December 31, 2011	$ —	$ —	$ —	$ —	$ —
Expenses	1,125	262	—	541	1,928
Cash payments	(566)	(117)	—	(541)	(1,224)
Liability balance as of December 31, 2012	$ 559	$ 145	$ —	$ —	$ 704

Other transitional costs totaled $3.0 million, $1.5 million and $0.5 million in the years ended December 31, 2012, 2011 and 2010, respectively. During the year ended December 31, 2012 they also include $0.8 million for certain state sales taxes associated with prior year sales.

NOTE 7-- PROPERTY AND EQUIPMENT

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

	December 31,	
	2012	**2011**
Computer and office equipment, including equipment acquired under capital leases	$ 14,443	$ 15,684
Software capitalized for internal use	9,939	15,520
Vehicles, including equipment acquired under capital leases	1,540	1,701
Medical equipment	16,466	14,698
Work in progress	4,315	2,813
Furniture and fixtures	3,219	3,626
Leasehold improvements	7,164	6,507
	57,086	60,549
Less: Accumulated depreciation	(33,365)	(33,598)
Property and equipment, net	$ 23,721	$ 26,951

Work in progress for 2012 and 2011 includes $1.3 million and $2.0 million, respectively, of costs related to software capitalized for internal use.

Depreciation expense, including expense related to assets under capital lease, for the years ended December 31, 2012, 2011 and 2010 was $8.5 million, $6.6 million, and $5.4 million, respectively. Depreciation expense for the years ended December 31, 2012, 2011 and 2009 includes $1.3 million, $0.8 million, and $0.8 million, respectively, related to costs related to software capitalized for internal use.

Impairment

The Company assesses the impairment of its assets whenever events or changes in circumstances indicate that the carrying value may not be recoverable. As a result of the Pharmacy Services Asset Sale (see Note 2 - Discontinued Operations), the Company evaluated certain facilities that were retained by the Company following the divestiture. As a result of the evaluation, the Company determined that a triggering event occurred during the three months ended June 30, 2012, giving rise to the need to assess the recoverability of certain of our assets previously used in the specialty pharmacy mail operations and community retail pharmacy operations, which consisted primarily of software capitalized for internal use, leasehold improvements and work in progress. Based on our analysis, we recorded a $5.8 million impairment charge in income (loss) from discontinued operations, net of income taxes on the Consolidated Statements of Operations.

NOTE 8-- DEBT

As of December 31, 2012 the Company’s long-term debt consisted of the following obligations (in thousands):

Senior unsecured notes	$	225,000
Capital leases		1,379
		226,379
Less - obligations maturing within one year		953
Long term debt - net of current portion	$	225,426

Senior Secured Revolving Credit Facility

On December 28, 2010, the Company entered into a credit agreement (the “Senior Secured Revolving Credit Facility”), among the Company and all of its subsidiaries and Healthcare Finance Group, LLC (“HFG”). The Senior Secured Revolving Credit Facility matures on March 25, 2015 and initially had an available line of credit totaling $150.0 million. The amount of borrowings which may be made under the Senior Secured Revolving Credit Facility is based on a borrowing base comprised of specified percentages of eligible receivables and eligible inventory, up to a maximum available line of credit and subject to certain liquidity and reserve requirements. If the amount of borrowings outstanding under the revolving credit facility exceeds the borrowing base then in effect, the Company will be required to repay such borrowings in an amount sufficient to eliminate such excess. Interest on advances is based on a Eurodollar rate plus an applicable margin of3.5%, with the Eurodollar rate initially having a floor of 1.25%. In the event of any default, the interest rate may be increased to 2.0% over the rate applicable to such loans. The facility also carries a non-utilization fee of 0.50% per annum, payable monthly, on the unused portion of the credit line. The facility includes $5.0 million of availability for letters of credit and $10.0 million of availability for swing line loans. Initially we were required to maintain a balance of not less than $30.0 million.

On July 3, 2012, the Company entered into a Third Amendment to the Second Amended and Restated Credit Agreement, by and among the Company, as borrower, all of its subsidiaries as guarantors thereto, the lenders, Healthcare Finance Group, LLC, an administrative agent, and the other parties thereto, which amended the Senior Secured Revolving Credit Facility. The amendment reduced revolving commitments from $150 million to $125 million; eliminated the minimum revolving balance requirement; increased the basket limitation for loans and advances to third parties and investments in permitted joint ventures to $60 million; removed the dollar limitation on permitted acquisitions so long as the proposed acquisition meets the pro forma and other conditions; lowered the LIBOR floor to 1.00% from 1.25%; and modified the definition of the term “Consolidated EBITDA”. As of December, 2012, there were no borrowings under the Senior Secured Revolving Credit Facility, as amended.

The Company's obligations under the Senior Secured Revolving Credit Facility, as amended, have been guaranteed by the Company's subsidiaries and secured by first priority security interests in substantially all of the Company's and subsidiary guarantors' assets (including the capital stock of our subsidiaries). The Senior Secured Revolving Credit Facility, as amended, includes customary affirmative and negative covenants and events of default, as well as financial covenants relating to minimum liquidity, minimum fixed charge coverage ratio and accounts receivable turnover. Negative covenants include limitations on

additional debt, liens, negative pledges, investments, dividends, stock repurchases, asset sales and affiliate transactions. Events of default include non-performance of covenants, breach of representations, cross-default to other material debt, bankruptcy and insolvency, material judgments and changes in control. The Company is in compliance with all covenants as of December 31, 2012 and as of the date of filing of this report.

The weighted average interest rate on our short term borrowings during the year ended December 31, 2012 was 4.69%. The weighted average interest rate on our short term borrowings during the year ended December 31, 2011 was 4.66%.

Senior Unsecured Notes

In connection with the acquisition of CHS, on March 25, 2010, the Company issued $225.0 million aggregate principal amount of 10¼% senior unsecured notes (“Senior Unsecured Notes”) due October 1, 2015 in an unregistered offering pursuant to Rule 144A and Regulation S under the Securities Act of 1933. The Company pays interest on the notes semi-annually, in arrears, on April 1 and October 1 of each year. These notes are fully and unconditionally guaranteed, jointly and severally, on a senior unsecured basis by the Company's existing and future direct and indirect subsidiaries. As of December 31, 2012, the Company did not have any independent assets or operations and, as a result, its direct and indirect subsidiaries (other than minor subsidiaries), each being 100% owned by the Company, were fully and unconditionally, jointly and severally, providing guarantees on a senior unsecured basis to the Senior Unsecured Notes. As noted above, the Company and each of its guarantor subsidiaries are subject to restrictive covenants under the Senior Secured Revolving Credit Facility. The Senior Secured Revolving Credit Facility ranks senior in priority to each subsidiary's guarantee of the notes and could restrict the Company's ability to obtain funds from the guarantor subsidiaries. As of December 31, 2012, the carrying amount of the Company's Senior Unsecured Notes was $225.0 million, and the estimate of the fair value of the Senior Unsecured Notes, calculated using Level 1 inputs using current market rates for debt of the same risk and maturities, was $267.1 million.

On June 22, 2010, the Company filed an Offer to Exchange (the “Exchange Offer”) the original unregistered notes with new registered notes, as contemplated in the original note offering. The Senior Unsecured Notes are substantially identical to the original notes except some of the transfer restrictions, registration rights and additional interest provision relating to the original notes do not apply. On July 13, 2010, the Company's planned registration of the notes became effective. The Exchange Offer expired on August 12, 2010, and the new registered notes commenced trading publicly on August 16, 2010.

On or after April 1, 2013, the Company may redeem some or all of the Senior Unsecured Notes at the pre-determined redemption prices plus accrued and unpaid interest to the date of redemption. The redemption premium percentages for notes redeemed are as follows: (a) on or after April 1, 2013, 105.125% of the principal amount, and (b) on or after October 1, 2014, 100.000% of the principal amount. Prior to April 1, 2013, the Company may redeem up to 35% of the aggregate principal amount of the notes at the premium of 110.250% of the principal amount thereof, plus accrued and unpaid interest and liquidated damages, if any, to the redemption date, with the net cash proceeds of certain equity offerings. In addition, the Company may, at its option, redeem some or all of the Senior Unsecured Notes at any time prior to April 1, 2013, by paying a premium.

Debt Issuance Costs and Other Fees

Total debt issuance costs related to the Senior Secured Revolving Credit Facility and Senior Unsecured Notes were $4.4 million and $5.2 million as of December 31, 2012 and 2011, respectively. These costs are being amortized over the term of the Senior Secured Revolving Credit Facility and Senior Unsecured Notes.

Loss on Extinguishment of Debt

In connection with the Senior Secured Revolving Credit Facility agreement that was signed on December 28, 2010, the Company terminated its then existing $100 million term loan that was outstanding at that time. The Company incurred a loss on extinguishment of debt of $3.0 million in connection with these transactions, consisting of the write-off of deferred financing costs associated with the term loan and fees paid to the lender. Additionally, $6.6 million of loss was allocated to discontinued operations.

Interest Expense

Net interest expense was $26.1 million, $25.5 million, and $23.6 million, and for the years ended December 31, 2012, 2011, and 2010, respectively. Interest expense for the year ended December 31, 2012 included $24.2 million of interest expense related to the Senior Unsecured Notes and $2.8 million related to the Senior Secured Revolving Credit Facility. Interest expense for the year ended December 31, 2011 included $24.1 million of interest expense related to the Senior Unsecured Notes and $4.4 million related to the Senior Secured Revolving Credit Facility. Interest expense for the year ended December 31, 2010 included $24.4

million of interest expense related to the Senior Secured Revolving Credit Facility, as amended, and Senior Unsecured Notes issued in March 2010 and $2.3 million related to a bridge loan finance fee.

NOTE 9-- COMMITMENTS AND CONTINGENCIES

Legal Proceedings

On March 31, 2009, Professional Home Care Services, Inc., or PHCS, which is one of the subsidiaries we acquired through our acquisition of CHS, was sued by Alexander Infusion, LLC, a New York-based home infusion company, in the Supreme Court of the State of New York. The complaint alleges principally breach of contract arising in connection with PHCS's failure to consummate an acquisition of Alexander Infusion after failing to satisfy the conditions to PHCS's obligation to close. Alexander Infusion has sued for $3.5 million in damages. We believe Alexander Infusion's claims to be without merit and intend to continue to defend against the allegations vigorously. Furthermore, under the Merger Agreement, subject to certain limits, the former CHS Stockholders agreed to indemnify us in connection with any losses arising from claims made in respect of the acquisition agreement entered into between PHCS and Alexander Infusion.

As was previously disclosed, following responses to government subpoenas and discussions with the government, in May 2011, the Company was advised of a qui tam lawsuit filed under seal in federal court in Minnesota in 2006 and naming the Company as defendant. The complaint alleged violations of healthcare statutes and regulations by the Company and predecessor companies dating back to 2000. The Company has entered into a final settlement resolving all issues alleged in the complaint and the government's investigation in exchange for a release and dismissal of the claims.

Government Regulation

Various federal and state laws and regulations affecting the healthcare industry do or may impact the Company's current and planned operations, including, without limitation, federal and state laws prohibiting kickbacks in government health programs, federal and state antitrust and drug distribution laws, and a wide variety of consumer protection, insurance and other state laws and regulations. While management believes the Company is in substantial compliance with all existing laws and regulations material to the operation of its business, such laws and regulations are subject to rapid change and often are uncertain in their application. As controversies continue to arise in the healthcare industry (for example, the efforts of Plan Sponsors and pharmacy benefit managers to limit formularies, alter drug choice and establish limited networks of participating pharmacies), federal and state regulation and enforcement priorities in this area can be expected to increase, the impact of which cannot be predicted.

From time to time, the Company responds to subpoenas and requests for information from governmental agencies. The Company cannot predict with certainty what the outcome of any of the foregoing might be. While the Company believes it is in substantial compliance with all laws, rules and regulations that affects its business and operations, there can be no assurance that the Company will not be subject to scrutiny or challenge under one or more existing laws or that any such challenge would not be successful. Any such challenge, whether or not successful, could have a material effect upon the Company's Consolidated Financial Statements. A violation of the Federal anti-kickback statute, for example, may result in substantial criminal penalties, as well as suspension or exclusion from the Medicare and Medicaid programs. Moreover, the costs and expenses associated with defending these actions, even where successful, can be significant. Further, there can be no assurance the Company will be able to obtain or maintain any of the regulatory approvals that may be required to operate its business, and the failure to do so could have a material effect on the Company's Consolidated Financial Statements.

Legal Settlements

Following responses to government subpoenas and discussions with the government, in May 2011, we were advised of a qui tam lawsuit filed under seal in federal court in Minnesota in 2006 and naming us as defendant. The complaint alleged violations of healthcare statutes and regulations by the Company and predecessor companies dating back to 2000. The Company entered into a final settlement under which we paid the states $0.6 million and the federal government $4.4 million resolving all issues alleged in the complaint and the government's investigation in exchange for a release and dismissal of the claims. A related qui tam relator's employment termination claim and her lawyer's statutory legal fee claim were also resolved. During the year ended December 31, 2011, the Company recorded a legal settlement expense of $4.8 million related to the settlement. During the year ended December 31, 2012, the Company recorded additional legal settlement expense of $0.8 million to account for the final settlement amount. The legal settlement expenses were included in income from discontinued operations, net of income taxes in the accompanying Consolidated Statements of Operations. As of December 31, 2012 there was no remaining liability and as

of December 31, 2011, there was a liability of $4.8 million, included in accrued expenses and other current liabilities in the accompanying Consolidated Balance Sheets related to the settlement.

During the year ended December 31, 2010, we recorded $3.9 million of legal settlement costs. These costs were the result of an independent arbitration award against the Company in a lawsuit brought by JPD, Inc. and James P. DiCello, the sellers of Northland Medical Pharmacy (“Northland”), which was purchased in late 2005 by Chronimed Holdings, Inc. (“Chronimed”), a wholly-owned subsidiary of the Company.

PBM Services Payment Delay

The Company has a large PBM Services customer that had become approximately two months behind payment terms as of September 30, 2012 for a total amount owed to the Company of $7.8 million (of which $0.3 million was due to the Company for PBM services rendered) ("the $7.8M Obligation"). The customer remitted full payment to the Company and fully satisfied the $7.8M Obligation in December, 2012. This customer has also provided the Company with a release of any and all claims it may have against the Company that relate to PBM services rendered, including those relating to the $7.8M Obligation.

Leases

The Company leases its facilities and certain equipment under various operating leases with third parties. The majority of these leases contain escalation clauses that increase base rent payments based upon either the Consumer Price Index or an agreed upon schedule.

In addition, the Company utilizes capital leases agreements with third parties to obtain certain assets such as telecommunications equipment and vehicles. Interest rates on capital leases are both fixed and variable and range from 3% to 7%.

As of December 31, 2012, future minimum lease payments under operating and capital leases were as follows (in thousands):

	Operating Leases	Capital Leases	Total
2013	$ 6,481	$ 1,017	$ 7,498
2014	5,826	225	6,051
2015	5,001	192	5,193
2016	4,414	23	4,437
2017	3,764	—	3,764
2018 and thereafter	5,052	—	5,052
Total	$ 30,538	$ 1,457	$ 31,995

Rent expense for leased facilities and equipment was approximately $6.2 million, $6.3 million, and $5.2 million for the years ended December 31, 2012, 2011 and 2010, respectively.

Letters of Credit

At December 31, 2010, there was $4.3 million of cash on deposit as collateral for certain letters of credit from commercial banks obtained in the ordinary course of business. The collateral was included in prepaid expenses and other current assets on the Consolidated Balance Sheets. During the year ended December 31, 2011, the Company was refunded the $4.3 million and elected to fulfill the requirement for collateral by reducing the availability under the line of credit. As of December 31, 2012 and as of December 31, 2011, the availability on the line was reduced by $3.5 million to fulfill these collateral requirements.

Purchase Commitments

As of December 31, 2012, the Company had commitments to purchase prescription drugs from drug manufacturers of approximately $29.4 million in 2013. These purchase commitments are made at levels expected to be used in the normal course of business.

NOTE 10-- OPERATING AND REPORTABLE SEGMENTS

As a result of the Company entering into the Asset Purchase Agreement on February 1, 2012 with respect to the sale of its traditional and specialty pharmacy mail operations and community retail pharmacy stores, the Company reevaluated its operating and reportable segments in accordance with the provisions of ASC 280. Based on its review, the Company changed its operating and reportable segments from “Infusion/Home Health Services” and “Pharmacy Services” to its new operating and reportable segments: “Infusion Services", "Home Health Services” and “PBM Services”. These three new operating and reportable segments reflect how the Company's chief operating decision maker reviews the Company's results in terms of allocating resources and assessing performance. Prior period disclosures reflect the change in reportable segments.

The Infusion Services operating and reportable segment provides services consisting of home infusion therapy, respiratory therapy and the provision of durable medical equipment, products and services. Infusion services include the dispensing and administering of infusion-based drugs, which typically require additional nursing and clinical management services, equipment to administer the correct dosage and patient training designed to improve patient outcomes. Home infusion services also include the dispensing of self-injectable therapies.

The Home Health Services operating and reportable segment provides services including the provision of skilled nursing services and therapy visits, private duty nursing services, hospice services, rehabilitation services and medical social services to patients primarily in their home.

The PBM Services operating and reportable segment consists of integrated pharmacy benefit management ("PBM") services, which primarily consists of discount card programs. The discount card programs provide a cost effective alternative for individuals who may be uninsured, underinsured or may have restrictive coverage that disallows reimbursement for certain medications. Under these discount programs, individuals who present a discount card at one of the Company's participating network pharmacies receive prescription medications at a discounted price compared to the retail price. In addition, in the Company's capacity as a pharmacy benefit manager, it has fully funded prescription benefit programs where the Company reimburses its network pharmacies and third party payors in turn reimburse the Company based on Medi-Span reported pricing for those claims fulfilled for their plan participants.

The Company's chief operating decision maker evaluates segment performance and allocates resources based on Segment Adjusted EBITDA. Segment Adjusted EBITDA is defined as income (loss) from continuing operations, net of income taxes adjusted for net interest expense, income tax expense (benefit), depreciation, amortization of intangibles and stock-based compensation expense and prior to the allocation of certain corporate expenses. Segment Adjusted EBITDA excludes acquisition and integration expenses; restructuring and other expense; and other expenses related to the Company's strategic assessment. Segment Adjusted EBITDA is a measure of earnings that management monitors as an important indicator of operating and financial performance. The accounting policies of the operating and reportable segments are consistent with those described in the Company's summary of significant accounting policies.

Segment Reporting Information
(in thousands)

	Years Ended December 31,		
	2012	**2011**	**2010**
Results of Operations:			
Revenue:			
Infusion Services - product revenue	$ 471,506	$ 365,526	$ 306,688
Infusion Services - service revenue	10,080	8,756 1,000	9,019
Total Infusion Services revenue	481,586	374,282	315,707
Home Health Services - service revenue	69,190	69,635	56,264
PBM Services - service revenue	111,861	110,589	58,736
Total revenue	$ 662,637	$ 554,506	$ 430,707
Adjusted EBITDA by Segment before corporate overhead:			
Infusion Services	$ 36,764	$ 35,128	$ 37,853
Home Health Services	5,401	5,954	4,839
PBM Services	25,659	30,122	18,549
Total Segment Adjusted EBITDA	67,824	71,204	61,241
Corporate overhead	(26,755)	(23,308)	(29,830)
Interest expense, net	(26,067)	(25,542)	(23,560)
Loss on extinguishment of debt	—	—	(2,954)
Income tax benefit (expense)	4,439	(435)	(48,700)
Depreciation	(8,513)	(6,591)	(5,379)
Amortization of intangibles	(3,957)	(3,376)	(2,522)
Stock-based compensation expense	(6,122)	(4,467)	(3,320)
Acquisition and integration expenses	(4,046)	—	(5,924)
Restructuring and other expenses	(5,143)	(7,909)	(3,985)
Bad debt expense related to contract termination	—	—	(2,742)
Net loss from continuing operations, net of income taxes	$ (8,340)	$ (424)	$ (67,675)
Supplemental Operating Data			
Capital Expenditures:			
Infusion Services	$ 6,685	$ 4,826	$ 2,967
Home Health Services	171	170	276
PBM Services	—	—	—
Corporate unallocated	4,130	2,857	3,487
Total	$ 10,986	$ 7,853	$ 6,730
Depreciation Expense:			
Infusion Services	$ 4,347	$ 5,242	$ 3,156
Home Health Services	111	48	64
PBM Services	—	—	—
Corporate unallocated	4,055	1,301	2,159
Total	$ 8,513	$ 6,591	$ 5,379

Total Assets			
Infusion Services	$ 438,623	$ 353,999	$ 322,577
Home Health Services	62,403	64,672	92,821
PBM Services	36,354	40,418	26,118
Corporate unallocated	95,813	24,348	19,581
Assets from discontinued operations	—	59,005	73,022
Assets associated with discontinued operations, not sold	9,183	134,660	129,869
Total	$ 642,376	$ 677,102	$ 663,988
Goodwill			
Infusion Services	$ 304,282	$ 265,859	$ 265,859
Home Health Services	33,784	33,784	33,784
PBM Services	12,744	12,744	12,744
Total	$ 350,810	$ 312,387	$ 312,387

NOTE 11-- CONCENTRATION OF RISK

Customer and Credit Risk

The Company provides trade credit to its customers in the normal course of business. One payor accounted for approximately 18%, 13% and 15% of revenue during the years ended December 31, 2012, 2011 and 2010, respectively. The majority of the revenue is related to the Infusion Services segment.

Therapy Revenue Risk

The Company sells products related to the Immune Globulin (IVIG) therapy, which represented 19%, 25% and 18% of revenue during the years ended December 31, 2012, 2011 and 2010, respectively. The revenue is related to the Infusion Services segment.

NOTE 12-- INCOME TAXES

The Company's Federal and state income tax expense (benefit) is summarized in the following table (in thousands):

	For the Years Ended December 31,		
	2012	**2011**	**2010**
Current			
Federal	$ (3,759)	$ (167)	$ 299
State	(676)	(122)	91
Total current	(4,435)	(289)	390
Deferred			
Federal	121	632	43,241
State	(125)	92	5,069
Total deferred	(4)	724	48,310
Total tax (benefit) provision	$ (4,439)	$ 435	$ 48,700

The effect of temporary differences that give rise to a significant portion of deferred taxes is as follows (in thousands):

	December 31,	
	2012	2011
Deferred tax assets:		
Reserves not currently deductible	$ 11,771	$ 16,325
Net operating loss carryforwards	16,287	13,749
Goodwill and intangibles (tax deductible)	7,278	18,377
Accrued expenses	3,055	1,705
Stock based compensation	3,717	4,087
Other	1,778	1,671
Subtotal deferred tax assets	43,886	55,914
Deferred tax liabilities:		
Property basis differences	(3,144)	(3,312)
Indefinite-lived goodwill and intangibles	(11,306)	(10,673)
Less: valuation allowance	(39,727)	(52,224)
Net deferred tax liability	$ (10,291)	$ (10,295)

During the fourth quarter of 2010, the Company concluded that it was more likely than not that its deferred tax assets would not be realized. Accordingly, a valuation allowance of $56.2 million was recorded against all of the Company's deferred tax assets as of December 31, 2010. The Company continually assesses the necessity of a valuation allowance. Based on this assessment, the Company concluded that a valuation allowance, in the amount of $39.7 million and $52.2 million, was required as of December 31, 2012 and 2011, respectively. If the Company determines in a future period that it is more likely than not that part or all of the deferred tax assets will be realized, the Company will reverse part or all of the valuation allowance.

At December 31, 2012, the Company had federal net operating loss (“NOL”) carry forwards of approximately $49.6 million, of which $26.6 million is subject to an annual limitation, which will begin expiring in 2026 and later. Of the Company’s $49.6 million of Federal NOLs, $14.6 million will be recorded in additional paid-in capital when realized as these NOLs are related to the exercise of non-qualified stock options and restricted stock grants. The Company has post-apportioned state NOL carry forwards of approximately $97.2 million, the majority of which will begin expiring in 2017 and later.

The Company’s reconciliation of the statutory rate to the effective income tax rate is as follows (in thousands):

	2012	2011	2010
Tax (benefit) provision at statutory rate	$ (4,473)	$ 4	$ (6,641)
State tax (benefit) provision, net of federal taxes	(587)	36	(517)
Non-deductible transaction costs	—	—	725
Penalties	—	78	—
Change in tax contingencies	(633)	(675)	552
Valuation allowance changes affecting income tax expense	1,104	778	53,982
Other	150	214	599
Tax (benefit) provision	$ (4,439)	$ 435	$ 48,700

As of December 31, 2012, the Company had $2.8 million of total gross unrecognized tax benefits, $1.1 million of which, if recognized, would favorably affect the effective income tax rate in future periods. A reconciliation of the beginning and ending amount of gross unrecognized tax benefits is as follows (in thousands):

	2012	2011	2010
Unrecognized tax benefits balance at January 1,	$ 2,605	$ 2,869	$ 1,948
Gross increases for tax positions of prior years	—	—	212
Gross increases for tax positions taken in current year	636	378	1,121
Settlements with taxing authorities	—	(212)	—
Lapse of statute of limitations	(487)	(430)	(412)
Unrecognized tax benefits balance at December 31,	$ 2,754	$ 2,605	$ 2,869

The Company's policy for recording interest and penalties associated with uncertain tax positions is to record such items as a component of income tax expense in the statement of operations. As of December 31, 2012 and December 31, 2011, the Company had approximately $0.3 million and $0.4 million of accrued interest related to uncertain tax positions, respectively.

The Company files income tax returns, including returns for its subsidiaries, with Federal, state and local jurisdictions. The Company's uncertain tax positions are related to tax years that remain subject to examination. As of December 31, 2012, U.S. tax returns for the years 2009 through 2012 remain subject to examination by Federal tax authorities. Tax returns for the years 2008 through 2012 remain subject to examination by state and local tax authorities for a majority of the Company's state and local filings.

NOTE 13-- TREASURY STOCK

During the years ended December 31, 2012, 2011 and 2010, 25,999, 25,273, and 31,467 shares, respectively, were surrendered to satisfy tax withholding obligations on the vesting of restricted stock awards. The Company holds a total of 2,582,520 shares of treasury stock acquired at December 31, 2012 under current and prior repurchase programs as well as forfeitures to satisfy tax obligations in the vesting of restricted stock awards.

NOTE 14-- WARRANTS

In March 2010, in connection with the acquisition of CHS, the Company issued 3.4 million of warrants exercisable for BioScrip common stock. The warrants have a five year term with an exercise price of $10.00 per share. They are exercisable at any time prior to the expiration date. The warrants also contain provisions whereby the number of shares to be issued upon exercise of the warrants will be increased if the Company were to execute certain dilutive transactions such as stock splits, stock dividends or the issuance of shares below 90% of market value at the time of issuance. The Company has determined that the warrants meet the conditions for equity classification in accordance with GAAP. Therefore, these warrants were classified as equity and included in additional paid-in capital.

As of December 31, 2012, 3.4 million warrants are outstanding, and none have been exercised.

The fair value of the warrants of $12.3 million was calculated using the Black-Scholes model. The Black-Scholes model used the following assumptions: volatility of 62%, risk free interest rate of 2.63%, dividend yield of 0% and expected term of five years. In addition, there was a discount applied for lack of marketability of 13.5%. This discount is considered appropriate because the warrants were not registered under the Securities Act of 1933, and the shares issued upon exercise of the warrants will be unregistered shares subject to transfer restrictions.

NOTE 15-- STOCK-BASED COMPENSATION

BioScrip Equity Incentive Plans

Under the Company's Amended and Restated 2008 Equity Incentive Plan (as amended and restated, the “2008 Plan”), the Company may issue, among other things, incentive stock options (“ISOs”), non-qualified stock options (“NQSOs”), stock appreciation rights ("SARs"), restricted stock, performance shares and performance units to employees and directors. While SARS are authorized under the 2008 Plan, they may also be issued outside of the plan. Under the 2008 Plan, 3,580,000 shares were originally authorized for issuance (subject to adjustment for grants made under the Company's 2001 Incentive Stock Plan (the “2001 Plan”) after January 1, 2008, as well as for forfeitures, expirations or awards that under the 2001 Plan otherwise settled in cash after the adoption thereof). Upon the effective date of the 2008 Plan, the Company ceased making grants under the 2001

Plan. The 2008 Plan is administered by the Company's Management Development and Compensation Committee (the “Compensation Committee”), a standing committee of the Board of Directors. On June 10, 2010, the Company's stockholders approved an amendment to the 2008 Plan to increase the number of authorized shares of common stock available for issuance by 3,275,000 shares to 6,855,000 shares.

As of December 31, 2012, there were 2,028,726 shares that remained available for grant under the 2008 Plan.

BioScrip/CHS Equity Plan

Effective upon closing of the acquisition of CHS, the CHS 2006 Equity Incentive Plan was adopted by the Company and renamed the “BioScrip/CHS 2006 Equity Incentive Plan” (as amended and restated, the “BioScrip/CHS Plan”). There were 13,000,000 shares of CHS common stock originally authorized for issuance under the CHS 2006 Equity Incentive Plan, which were converted into 3,106,315 shares of BioScrip common stock, and adjusted using the exchange ratio defined by the merger agreement. The Board of Directors further amended the BioScrip/CHS Plan to provide for it to have substantially the same terms and provisions as the 2008 Plan.

Of the options authorized and outstanding under the BioScrip/CHS Plan on the date of the acquisition, 716,086 options were designated as “rollover” options. These rollover options were issued to the top five executives of CHS at the time of the acquisition, and otherwise remain subject to the term of the BioScrip/CHS Plan, as amended, and fully vested on the date of conversion. Under the terms of the BioScrip/CHS Plan, any shares of BioScrip common stock subject to rollover options that expire or otherwise terminate before all or any part of the shares subject to such options have been purchased as a result of the exercise of such options shall remain available for issuance under the BioScrip/CHS Plan.

The remaining 2,390,229 shares are authorized for issuance under the BioScrip/CHS Plan. These shares may be used for awards under the BioScrip/CHS Plan, provided that awards using such available shares are not made after the date that awards or grants could have been made under the terms of the pre-existing plan, and are only made to individuals who were not employees or directors of BioScrip or an affiliate or subsidiary of BioScrip prior to such acquisition. As of December 31, 2012, there were 1,719,528 shares that remained available under the Bioscrip/CHS Plan.

Annual Equity Grant

On March 8, 2012 and May 7, 2012 the Compensation Committee approved a grant of approximately 1.7 million NQSO awards and 0.1 million restricted stock awards to key employees, consultants and members of the board of directors consistent with the Compensation Committee's historic grant practices.

Stock Options

Options granted under the plans: (a) typically vest over a three-year period and, in certain instances, fully vest upon a change in control of the Company, (b) have an exercise price that may not be less than 100% of its fair market value on the date of grant (110% for ISOs granted to a stockholder who holds more than 10% of the outstanding stock of the Company), and (c) are generally exercisable for ten years (five years for ISOs granted to a stockholder holding more than 10% of the outstanding stock of the Company) after the date of grant, subject to earlier termination in certain circumstances.

The Company recognized compensation expense related to stock options of $4.6 million, $3.7 million, and $3.3 million, in the years ended December 31, 2012, 2011 and 2010, respectively. Compensation expense related to acceleration of vesting for terminated employees was $0.3 million during the year ended December 31, 2012.

The fair value of each stock option award on the date of the grant was calculated using a binomial option-pricing model. Option expense is amortized on a straight-line basis over the requisite service period with the following weighted average assumptions:

	2012	2011	2010
Expected volatility	64.8%	64.1%	63.4%
Risk-free interest rate	1.98%	3.23%	3.35%
Expected life of options	5.8 years	5.2 years	5.7 years
Dividend rate	—	—	—
Fair value of options	4.00	2.53	4.09

Stock option activity for the 2008 Plan and the BioScrip/CHS Plan through December 31, 2012 was as follows:

	Options	Weighted Average Exercise Price	Aggregate Intrinsic Value (thousands)	Weighted Average Remaining Contractual Life
Balance, December 31, 2011	5,610,361	$ 5.94	$ 4,747.2	5.4 years
Granted	2,106,500	6.79		
Exercised	(1,728,186)	5.01		
Forfeited and expired	(1,103,460)	8.90		
Balance, December 31, 2012	4,885,215	$ 5.97	$ 23,462.8	7.8 years
Outstanding options less expected forfeitures at December 31, 2012	4,547,982	$ 5.96	$ 21,890.7	7.7 years
Exercisable at December 31, 2012	1,872,364	$ 5.36	$ 10,124.1	6.1 years

The weighted-average, grant-date fair value of options granted during the years ending December 31, 2012, 2011 and 2010 was $4.00, $2.53, and $4.09, respectively. The total intrinsic value of options exercised during the years December 31, 2012, 2011 and 2010 was $4.4 million, $2.5 million, and $3.1 million, respectively.

Cash received from option exercises under share-based payment arrangements for the years ended December 31, 2012, 2011, and 2010 was $8.7 million, $3.2 million, and $4.1 million, respectively.

The maximum term of stock options under these plans is ten years. Options outstanding as of December 31, 2012 expire on various dates ranging from April 2013 through November 2022. The following table outlines our outstanding and exercisable stock options as of December 31, 2012:

	Options Outstanding			Options Exercisable	
Range of Option Exercise Price	Outstanding Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life	Options Exercisable	Weighted Average Exercise Price
$1.71 - $4.24	671,960	$ 2.81	5.99 years	608,629	$ 2.66
$4.42 - $6.00	902,111	4.48	8.03 years	313,151	4.60
$6.04 - $6.62	1,958,751	6.60	8.53 years	272,420	6.52
$6.65 - $7.73	944,000	7.06	8.00 years	389,769	6.83
$7.95 - $9.56	408,393	8.90	6.21 years	288,395	8.82
	4,885,215	$ 5.97	7.79 years	1,872,364	$ 5.36

As of December 31, 2011 and 2010 the exercisable portion of outstanding options was approximately 3.3 million shares and 4.0 million shares, respectively.

As of December 31, 2012 there was $7.0 million of unrecognized compensation expense related to unvested option grants. That expense is expected to be recognized over a weighted-average period of 2.0 years.

As compensation expense for options granted is recorded over the requisite service period of options, future stock-based compensation expense may be greater as additional options are granted.

Restricted Stock

Under the 2008 Plan, stock grants subject solely to an employee's or director's continued service with the Company will not become fully vested less than (a) three years from the date of grant to employees and, in certain instances, may fully vest upon a change in control of the Company, and (b) one year from the date of grant for directors. Stock grants subject to the achievement of performance conditions will not vest less than one year from the date of grant where the vesting of stock grants is subject to performance measures. Such performance shares may vest after one year from grant. No such time restrictions applied to stock grants made under the Company's prior equity compensation plans.

The Company recognized compensation expense related to restricted stock awards of $0.4 million, $0.5 million, and $0.3 million for the years ended December 31, 2012, 2011 and 2010, respectively.

Since the Company records compensation expense for restricted stock awards based on the vesting requirements, which generally includes time elapsed, market conditions and/or performance conditions, the weighted average period over which the expense is recognized varies. Also, future equity-based compensation expense may be greater if additional restricted stock awards are made.

Restricted stock award activity through December 31, 2012 was as follows:

	Restricted Stock	Weighted Average Award Date Fair Value	Weighted Average Remaining Recognition Period
Balance December 31, 2011	225,232	$ 3.82	0.3 years
Granted	70,000	$ 7.52	
Awards Vested	(215,232)	$ 3.79	
Canceled	(10,000)	$ 4.42	
Balance December 31, 2012	70,000	$ 7.52	0.4 years

As of December 31, 2012, there was $0.2 million of unrecognized compensation expense related to unvested restricted stock awards. That expense is expected to be recognized over a weighted average period of 0.4 years. The total grant date fair market value of awards vested during the years ended December 31, 2012, 2011 and 2010 was $0.8 million, $0.6 million, and $0.5 million, respectively. The total intrinsic value of restricted stock awards vested during the years December 31, 2012, 2011 and 2010 was $2.3 million, $0.5 million, and $1.5 million, respectively.

Performance Units

Under the 2008 Plan, the Compensation Committee may grant performance units to key employees. The Compensation Committee will establish the terms and conditions of any performance units granted, including the performance goals, the performance period and the value for each performance unit. If the performance goals are satisfied, the Company would pay the key employee an amount in cash equal to the value of each performance unit at the time of payment. In no event may a key employee receive an amount in excess of $1.0 million with respect to performance units for any given year. To date, no performance units have been granted under the 2008 Plan.

Stock Appreciation Rights

The Company has granted cash-based phantom stock appreciation rights, or SARs, which are independent of the Company's 2008 Equity Incentive Plan, with respect to 380,000 shares of the Company's common stock, par value $.0001 per share. The SARs will vest in three equal annual installments and will fully vest in connection with a Change of Control (as defined in the grantee's employment agreement). These SARs may be exercised, in whole or in part, to the extent each SAR has been vested and will receive in cash the amount, if any, by which the closing stock price on the exercise date exceeds the Grant Price. Upon the

exercise of any SARs, as soon as practicable under the applicable Federal and state securities laws, the grantee may be required to use the net after-tax proceeds of such exercise to purchase shares of the Common Stock from the Company at the closing stock price of the Common Stock on that date and hold such shares of Common Stock for a period of not less than one year from the date of purchase, except that the grantee will not be required to purchase any shares of Common Stock if the SAR is exercised on or after a Change of Control of the Company. The grantee's right to exercise the SAR will expire on the earliest of (1) the tenth anniversary of the grant date, (2) under certain conditions as a result of termination of the grantee's employment, or (3) the date that the SAR is exercised in full.

SAR activity through December 31, 2012 was as follows:

	Stock Appreciation Right	Weighted Average Exercise Price	Weighted Average Remaining Recognition Period
Balance, December 31, 2011	300,000	5.27	2.1 years
Granted	180,000	7.85	
Exercised	(66,667)	4.42	
Canceled	(33,333)	4.42	
Balance, December 31, 2012	380,000	6.72	1.8 years

The SARs are recorded as a liability in other non-current liabilities in the accompanying Consolidated Balance Sheets. Compensation expense related to the SARS for the year ended December 31, 2012 was $1.1 million. Compensation expense recorded in the year ended December 31, 2011 related to the SARs was $0.3 million. As of December 31, 2012 there was $1.5 million of unrecognized compensation expense related to the SARs. That expense is expected to be recognized over a weighted-average period of 1.8 years. In addition, because they are settled with cash, the fair value of the SAR awards are revalued on a quarterly basis. During the year ended December 31, 2012 the Company paid $0.3 million related to the exercise of SAR awards.

NOTE 16-- DEFINED CONTRIBUTION PLANS

The Company maintains a deferred compensation plan under Section 401(k) of the Internal Revenue Code. Under the Plan, employees may elect to defer up to 50% of their salary, subject to Internal Revenue Service limits. The Company may make a discretionary matching contribution, which it elected not to do during the years ended December 31, 2012 and December 31, 2011. The Company recorded matching contributions in selling, general and administrative expenses of $2.0 million during the year ended December 31, 2010.

NOTE 17-- SELECTED QUARTERLY FINANCIAL DATA (UNAUDITED)

A summary of quarterly financial information for the years ended December 31, 2012 and 2011 is as follows (in thousands except per share data):

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
2012				
Revenue	$ 155,633	$ 155,901	$ 170,365	$ 180,738
Gross profit	$ 53,522	$ 53,041	$ 58,004	$ 60,393
Net loss from continuing operations	$ (2,023)	$ (4,293)	$ (605)	$ (1,419)
Net (loss) income from discontinued operations	$ (680)	$ 76,059	$ (10,931)	$ 8,599
Net (loss) income	$ (2,703)	$ 71,766	$ (11,536)	$ 7,180
Basic loss per share from continuing operations	$ (0.04)	$ (0.07)	$ (0.01)	$ (0.03)
Basic income (loss) per share from discontinued operations	$ (0.01)	$ 1.35	$ (0.19)	$ 0.15
Basic (loss) income per share	$ (0.05)	$ 1.28	$ (0.20)	$ 0.12
Diluted loss per share from continuing operations	$ (0.04)	$ (0.07)	$ (0.01)	$ (0.03)
Diluted income (loss) per share from discontinued operations	$ (0.01)	$ 1.35	$ (0.19)	$ 0.15
Diluted (loss) income per share	$ (0.05)	$ 1.28	$ (0.20)	$ 0.12
2011				
Revenue	$ 130,837	$ 131,575	$ 133,830	$ 158,264
Gross profit	$ 51,352	$ 51,830	$ 53,635	$ 58,598
Net (loss) income from continuing operations	$ (1,015)	$ (1,640)	$ (334)	$ 2,565
Net income (loss) from discontinued operations	$ 3,956	$ (686)	$ 882	$ 4,144
Net income (loss)	$ 2,941	$ (2,326)	$ 548	$ 6,709
Basic (loss) income per share from continuing operations	$ (0.02)	$ (0.03)	$ (0.01)	$ 0.05
Basic income (loss) per share from discontinued operations	$ 0.07	$ (0.01)	$ 0.02	$ 0.07
Basic income (loss) per share	$ 0.05	$ (0.04)	$ 0.01	$ 0.12
Diluted (loss) income per share from continuing operations	$ (0.02)	$ (0.03)	$ (0.01)	$ 0.05
Diluted income (loss) per share from discontinued operations	$ 0.07	$ (0.01)	$ 0.02	$ 0.07
Diluted income (loss) per share	$ 0.05	$ (0.04)	$ 0.01	$ 0.12

NOTE 18-- SUBSEQUENT EVENTS

Subsequent to December 31, 2012, we acquired 100 percent of the ownership interest in HomeChoice Partners, Inc., a Delaware corporation ("HomeChoice") pursuant to that Stock Purchase Agreement dated December 12, 2012 (the "Purchase Agreement") by and among the Company, HomeChoice, DaVita HealthCare Partners Inc., a Delaware corporation and majority stockholder of HomeChoice, and the other stockholders of HomeChoice. The purchase price was $70 million, subject to adjustment based in part on the net working capital of HomeChoice at closing (the "Purchase Price"). The Purchase Price may also be increased in an amount up to $20 million if HomeChoice reaches certain performance milestones in the two years following the closing. The Company funded the acquisition with a combination of cash on hand and drawing on its revolving credit facility. The initial accounting for this transaction was not yet complete as of March 5. 2013.

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

None.

Item 9A. ***Controls and Procedures***

Evaluation of Disclosure Controls and Procedures

As of the end of the period covered by this Annual Report, we evaluated the effectiveness of the design and operation of our disclosure controls. This evaluation was performed under the supervision and with the participation of management including our Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"). Disclosure controls are controls and procedures (as defined in the Exchange Act Rules 13d-15(e) and 15d-15(e)) designed to reasonably assure that information required to be disclosed in our reports filed under the Exchange Act, such as this Annual Report, is recorded, processed, summarized and reported within the

time periods specified in the SEC's rules and forms. Disclosure controls are also designed to reasonably assure that such information is accumulated and communicated to our management, including the CEO and CFO, as appropriate, to allow timely decisions regarding required disclosure.

The evaluation of our disclosure controls included a review of the controls objectives and design, our implementation of the controls and the effect of the controls on the information generated for use in this Annual Report. Based upon the controls evaluation, our CEO and CFO have concluded that our disclosure controls as of December 31, 2012 were effective.

Management Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed by, or under the supervision of, our CEO and CFO, and effected by our Board, management, and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the Company's financial transactions;

- Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our revenues and expenditures are being made only in accordance with authorizations of our management and directors; and

- Provide reasonable assurance regarding the prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on our financial statements.

Management excluded certain elements of internal control over financial reporting pertaining to the activities of InfuScience, which we acquired on July 31, 2012, as discussed in Note 4 of Notes to Consolidated Financial Statements. InfuScience revenue represented 2.5% of our consolidated total revenue for the year ended December 31, 2012. InfuScience total assets represented 1.2% of our consolidated total assets as of December 31, 2012. Management assessed our internal control over financial reporting as of December 31, 2012, the end of our fiscal year. Management based its assessment on criteria established in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Management's assessment included an evaluation of such elements as the design and operating effectiveness of key financial reporting controls, process documentation, accounting policies and our overall control environment.

Based on management's assessment of internal control over financial reporting our management believes that as of December 31, 2012, our internal control over financial reporting was effective. Our independent registered public accounting firm, Ernst & Young LLP, has issued an attestation report on the Company's internal control over financial reporting which is included herein.

Inherent Limitations on Control Systems

Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, will be or have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. 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 that any design will succeed in achieving its stated goals under all potential future conditions; over time, control may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate.

Changes in Internal Control over Financial Reporting

During the fiscal year ended December 31, 2012 we closed on and continued with the resolution of our Pharmacy Services Asset Sale. Due to the size of this asset disposal, changes in operating processes have resulted in changes to our financial reporting processes. These changes have been assessed by management to ensure that there has been no adverse impact to the Company's internal control over financial reporting. Thus, there was no change in our internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
BioScrip, Inc.

We have audited BioScrip, Inc.'s internal control over financial reporting as of December 31, 2012, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). BioScrip, Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.

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

In our opinion, BioScrip, Inc. maintained, in all material respects, effective internal control over financial reporting as of December 31, 2012, based on the COSO criteria**.**

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of BioScrip, Inc. and subsidiaries as of December 31, 2012 and 2011, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2012 and our report dated March 14, 2013, expressed an unqualified opinion thereon.

Minneapolis, Minnesota
March 14, 2013

/s/ Ernst & Young LLP

Item 9B. ***Other Information***

None.

PART III

Item 10. ***Directors, Executive Officers and Corporate Governance***

A list of our executive officers and biographical information appears in Part I of this Form 10-K. The remainder of the information required by this item is incorporated by reference from the information contained in our definitive proxy statement to be filed with the SEC on or before April 30, 2013 in connection with our 2013 Annual Meeting of Stockholders.

Item 11. ***Executive Compensation***

The information required by this item is incorporated by reference from the information contained in our definitive proxy statement to be filed with the SEC on or before April 30, 2013 in connection with our 2013 Annual Meeting of Stockholders.

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

The information required by this item is incorporated by reference from the information contained in our definitive proxy statement to be filed with the SEC on or before April 30, 2013 in connection with our 2013 Annual Meeting of Stockholders.

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

The information required by this item is incorporated by reference from the information contained in our definitive proxy statement to be filed with the SEC on or before April 30, 2013 in connection with our 2013 Annual Meeting of Stockholders.

Item 14. ***Principal Accountant Fees and Services***

The information required by this item is incorporated by reference from the information contained in our definitive proxy statement to be filed with the SEC on or before April 30, 2013 in connection with our 2013 Annual Meeting of Stockholders.

PART IV

Item 15. ***Exhibits, Financial Statement Schedules and Reports on Form 8-K***

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All other schedules not listed above have been omitted since they are not applicable or are not required.

3. Exhibits

Exhibit Number	Description	Location
2.1	Agreement and Plan of Merger, dated as of January 24, 2010, by and among BioScrip, Inc., Camelot Acquisition Corp., Critical Homecare Solutions Holdings, Inc., Kohlberg Investors V, L.P., Kohlberg Partners V, L.P., Kohlberg Offshore Investors V, L.P., Kohlberg TE Investors V, L.P., KOCO Investors V, L.P., Robert Cucuel, Mary Jane Graves, Nitin Patel, Joey Ryan, Blackstone Mezzanine Partners II L.P., Blackstone Mezzanine Holdings II L.P., and S.A.C. Domestic Capital Funding, Ltd.	(1) (Exhibit 2.1)
2.2	Community Pharmacy and Mail Business Purchase Agreement, dated as of February 1, 2012, by and among Walgreen Co., Walgreen Mail Service, Inc., Walgreens Specialty Pharmacy, LLC, and Walgreen Eastern Co., Inc., the Company and subsidiaries of the Company listed on Annex A thereto.	(31) (Exhibit 2.1)
3.1	Second Amended and Restated Certificate of Incorporation.	(2) (Exhibit 4.1)
3.2	Amendment to the Second Amended and Restated Certificate of Incorporation.	(4) (Exhibit 3.1)
3.3	Amended and Restated By-Laws.	(3) (Exhibit 3.1)
4.1	Specimen Common Stock Certificate.	(5) (Exhibit 4.1)
4.2	Amended and Restated Rights Agreement, dated as of December 3, 2002 between the Company and American Stock Transfer and Trust Company, as Rights Agent.	(6) (Exhibit 4.1)
4.3	First Amendment, dated December 13, 2006, to the Amended and Restated Rights Agreement, dated as of December 3, 2002 (the “Rights Agreement”), between the Company and American Stock Transfer & Trust Company, as Rights Agent.	(7) (Exhibit 10.1)
4.4	Second Amendment, dated March 4, 2009, to the Rights Agreement, as amended on December 13, 2006, between the Company and American Stock Transfer & Trust Company, as Rights Agent.	(8) (Exhibit 10.1)
4.5	Third Amendment, dated as of January 24, 2010, to the Rights Agreement, as amended on December 13, 2006 and March 4, 2009, between the Company and American Stock Transfer & Trust Company LLC, as Rights Agent, as amended on December 13, 2006 and March 4, 2009.	(1) (Exhibit 4.1)
4.6	Indenture, dated as of March 25, 2010, by and among BioScrip, Inc., the guarantors party thereto and U.S. Bank National Association, as trustee (including Form of 101/4% Senior Note due 2015).	(26) (Exhibit 4.1)
4.7	Warrant Agreement, dated as of March 25, 2010, by and among BioScrip, Inc., Kohlberg Investors V, L.P., Kohlberg Partners V, L.P., Kohlberg Offshore Investors V, L.P., Kohlberg TE Investors V, L.P., KOCO Investors V, L.P., Robert Cucuel, Mary Jane Graves, Nitin Patel, Joey Ryan, Colleen Lederer, Blackstone Mezzanine Partners II L.P., Blackstone Mezzanine Holdings II L.P. and S.A.C. Domestic Capital Funding, Ltd.	(26) (Exhibit 4.2)
4.8	Form of Cash-only Stock Appreciation Right Agreement.	(28) (Exhibit 10.39)
10.1 Ù	MIM Corporation 1999 Cash Bonus Plan For Key Employees.	(38) (Exhibit 10.61)
10.2 Ù	Amended and Restated 2001 Incentive Stock Plan.	(11)
10.3 Ù	Amendment to the BioScrip, Inc. 2001 Incentive Stock Plan.	(32) (Exhibit 10.1)
10.4 Ù	2008 Amended and Restated Equity Incentive Plan.	(12)
10.5 Ù	BIOSCRIP/CHS 2006 Equity Incentive Plan, as Amended and Restated.	(33) (Exhibit 10.3)
10.6 Ù	Employment Letter, dated October 15, 2001, between the Company and Russell J. Corvese.	(13) (Exhibit 10.51)
10.7 Ù	Amendment, dated September 19, 2003, to Employment Letter Agreement between the Company and Russel J. Corvese.	(14) (Exhibit 10.46)
10.8 Ù	Amendment, dated December 1, 2004, to Employment Letter Agreement between the Company and Russel J. Corvese.	(15) (Exhibit 10.1)
10.9 Ù	Severance Agreement, dated August 24, 2006, by and between BioScrip, Inc. and Barry A. Posner.	(16) (Exhibit 10.1)

10.10 Ù	Amendment No. 1 to Severance Agreement between BioScrip, Inc. and Barry A. Posner.	(18) (Exhibit 10.2)
10.11 Ù	Separation and Release Agreement dated as of October 6, 2011 between Barry A. Posner and BioScrip, Inc.	(34) (Exhibit 10.1)
10.12 Ù	Employment Letter Agreement, dated August 21, 2003, between MIM Corporation (now BioScrip, Inc.) and Scott Friedman.	(20) (Exhibit 10.1)
10.13 Ù	Amendment, dated October 14, 2004, to Employment Letter Agreement between MIM Corporation (now BioScrip, Inc.) and Scott Friedman.	(20) (Exhibit 10.2)
10.14 Ù *	Employment Offer Letter, dated as of June 21, 2007, by and between the Company and Pat Bogusz.	
10.15 Ù *	Amendment dated May 26, 2011, to the Employment Offer Letter by and between the Company and Pat Bogusz.	
10.16 Ù	Engagement Letter, dated as of January 31, 2011, by and between the Company and Mary Jane Graves.	(21) (Exhibit 10.1)
10.17 Ù	Employment Agreement, dated as of December 23, 2010, by and between BioScrip, Inc. and Richard M. Smith.	(22) (Exhibit 10.1)
10.18 Ù	Employment Offer Letter, dated as of November 29, 2010, by and between the Company and David W. Froesel, Jr.	(24) (Exhibit 10.1)
10.19 Ù	Severance Agreement, dated as of November 30, 2010, by and between the Company and David W. Froesel, Jr.	(24) (Exhibit 10.2)
10.20 Ù	Restrictive Covenant Agreement, dated as of November 29, 2010, by and between the Company and David W. Froesel, Jr.	(24) (Exhibit 10.3)
10.21 Ù	Separation Agreement dated as of November 1, 2010, by and between the Company and Richard H. Friedman.	(25) (Exhibit 10.1)
10.22 Ù	Engagement Letter, dated April 19, 2012, by and between the Company and Hai Tran.	(40) (Exhibit 10.1)
10.23 Ù *	Employment Offer Letter, dated January 30, 2009, by and between the Company and David Evans.	
10.24 Ù *	Employment Offer Letter, dated January 13, 2010, by and between the Company and Vito Ponzio.	
10.25	Letter of Credit Agreement dated July 8, 2009.	(19) (Exhibit 10.1)
10.26	Cash Collateral Agreement dated July 8, 2009.	(19) (Exhibit 10.2)
10.27 *	Second Amended and Restated Credit Agreement, dated as of March 17, 2011, by and among BioScrip, Inc., as borrower, all of its subsidiaries as subsidiary guarantors thereto, the lenders party thereto, Healthcare Finance Group, LLC, as administrative agent for the lenders, as collateral agent and as collateral manager for the secured parties, and the other entities party thereto.	
10.28	First Amendment to the Second Amended and Restated Credit Agreement	(35) (Exhibit 10.1)
10.29 *	Second Amendment to the Second Amended and Restated Credit Agreement.	
10.30	Third Amendment to the Second Amended and Restated Credit Agreement	(39) (Exhibit 10.2)
10.31	Amended and Restated Security Agreement, dated as of December 28, 2010, by and among BioScrip, Inc., as borrower, the other guarantors from time to time party thereto, as pledgors, assignors and debtors, and Healthcare Finance Group, LLC, in its capacity as collateral agent, as pledgee, assignee and secured party.	(23) (Exhibit 10.2)
10.32	Amended and Restated Collateral Management Agreement, dated as of December 28, 2010, by and among BioScrip, Inc., as borrower, the other loan parties from time to time party thereto and Healthcare Finance Group, LLC, in its capacity as collateral manager, as administrative agent.	(23) (Exhibit 10.3)
10.33	Intercreditor Agreement, dated as of March 25, 2010, by and between Jefferies Finance LLC, as agent for the first priority secured parties, and AmerisourceBergen Drug Corporation.	(26) (Exhibit 10.5)
10.34 #	Prime Vendor Agreement dated as of July 1, 2009 between AmerisourceBergen Drug Corporation, BioScrip, Inc. and the other parties thereto.	(30) (Exhibit 10.1)
10.35	First Amendment, dated as of March 25, 2010, to the Prime Vendor Agreement..	(26) (Exhibit 10.4)
10.36 #	Second Amendment, dated as of June 1, 2010 to the Prime Vendor Agreement.	(27) (Exhibit 10.1)
10.37 #	Third Amendment, dated as of August 1, 2010, to the Prime Vendor Agreement.	(36) (Exhibit 10.1)

10.38 #	Fourth Amendment, dated as of May 1, 2011, to the Prime Vendor Agreement.	(37) (Exhibit 10.2)
10.39 #	Fifth Amendment, dated as of January 1, 2012, to the Prime Vendor Agreement.	(29) (Exhibit 10.1)
10.40	Registration Rights Agreement, dated as of March 25, 2010, by and among BioScrip, Inc., the guarantors party thereto and Jefferies & Company, Inc.	(26) (Exhibit 10.6)
10.41	Stockholders' Agreement, dated as of January 24, 2010, by and among BioScrip, Inc., Kohlberg Investors V, L.P., Kohlberg Partners V, L.P., Kohlberg Offshore Investors V, L.P., Kohlberg TE Investors V, L.P., KOCO Investors V, L.P., Robert Cucuel, Mary Jane Graves, Nitin Patel, Joey Ryan, Colleen Lederer, Blackstone Mezzanine Partners II L.P., Blackstone Mezzanine Holdings II L.P., and S.A.C. Domestic Capital Funding, Ltd.	(1) (Exhibit 10.1)
21.1 *	List of Subsidiaries.	
23.1 *	Consent of Ernst and Young LLP.	
31.1 *	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	
31.2 *	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	
32.1 *	Certification of Chief Executive Officer pursuant to 18 U.S. C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	
32.2 *	Certification of Chief Financial Officer pursuant to 18 U.S. C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	
101 **	The following financial information from BioScrip Inc.'s Annual Report on Form 10-K for the fiscal year ended December 31, 2012, formatted in XBRL (eXtensible Business Reporting Language): (i) Statements of Income for the fiscal years ended December 31, 2012, 2011 and 2010, (ii) Balance Sheets as of December 31, 2012 and 2011, (iii) Statements of Cash Flows for the fiscal years ended December 31, 2012, 2011 and 2010, and (iv) Notes to Financial Statements.	

(1) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on January 27, 2010, SEC Accession No. 0000950123-10-005446.

(2) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on March 17, 2005, SEC Accession No. 0000950123-05-003294.

(3) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on July 30, 2009, SEC Accession no. 0001014739-09-000029.

(4) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on June 10, 2010, SEC Accession no. 0000950123-10-057214.

(5) Incorporated by reference to the indicated exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2005 filed with the SEC on March 31, 2006, SEC Accession no. 0000950123-06-004022.

(6) Incorporated by reference to Post-Effective Amendment No. 3 to the Company's form 8-A/A dated December 4, 2002, SEC Accession No. 0001089355-02-000648.

(7) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on December 14, 2006, SEC Accession No. 0000950123-06-015184.

(8) Incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on March 4, 2009, Accession No. 0001014739-09-000006.

(9) Incorporated by reference from the Company's definitive proxy statement for its 1999 annual meeting of stockholders filed with the Commission July 7, 1999SEC Accession No. 0001019056-99-000413.

(10) Incorporated by reference from the Company's definitive proxy statement for its 2002 annual meeting of stockholders filed with the Commission April 30, 2002, SEC Accession No. 0001089355-02-000316.

(11) Incorporated by reference from the Company's definitive proxy statement for its 2003 annual meeting of stockholders filed with the Commission April 30, 2003, SEC Accession No. 0001089355-03-000259

(12) Incorporated by reference from the Company's definitive proxy statement for its 2010 annual meeting of stockholders filed with the Commission May 10, 2010, SEC Accession No. 0000950123-10-046953.

(13) Incorporated by reference to the indicated exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2001, SEC Accession No. 0001089355-02-000248.

(14) Incorporated by reference to the indicated exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2003, filed March 15, 2004, SEC Accession No. 001014739-04-000021.

(15) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on December 1, 2004, SEC Accession No. 0001014739-04-000082.

(16) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on August 25, 2006, SEC Accession No. 0000950123-06-010723.

(17) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on August 3, 2007, SEC Accession No. 0000950123-07-010803.

(18) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on January 20, 2009 SEC Accession No. 0000950123-09-000854.

(19) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on July 9, 2009 SEC Accession No. 0001014739-09-000023.

(20) Incorporated by reference to the indicated exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2009 SEC Accession No. 0001014739-09-000031.

(21) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on February 3, 2011 SEC Accession No. 0001014739-11-000004.

(22) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K/A filed on December 30, 2010 SEC Accession No. 0000950123-10-117687.

(23) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on December 30, 2010 SEC Accession No. 0000950123-10-117583.

(24) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on December 3, 2010 SEC Accession No. 0000950123-10-110784.

(25) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on November 2, 2010 SEC Accession No. 0000950123-10-099147.

(26) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on March 31, 2010 SEC Accession No. 0000950123-10-030906.

(27) Incorporated by reference to the indicated exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2010, SEC Accession No. 0001014739-10-000025.

(28) Incorporated by reference to the indicated exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2010, SEC Accession No. 0001014739-11-000006.

(29) Incorporated by reference to the exhibit indicated to the Company's current report on Form 8-K filed on January 26, 2012, accession No 0000950138-12-000025.

(30) Incorporated by reference to the indicated exhibit to the Company's Amended Quarterly Report on Form 10-Q/A for the quarter ended September 30, 2009, SEC Accession No. 0001014739-09-000048.

(31) Incorporated by reference to the indicated exhibit to the Company's current report on Form 8-K filed on February 3, 2012, accession No. 0001193125-12-038785.

(32) Incorporated by reference to the indicated exhibit to the Company's current report on Form 8-K filed on August 10, 2011, accession No. 0001014739-11-000033.

(33) Incorporated by reference to the indicated exhibit to the Company's current report on Form 8-K filed on May 2, 2011, accession No. 0001014739-11-000015.

(34) Incorporated by reference the exhibit indicated to the Company's current report on Form 8-K filed on October 12, 2011, accession No. 0000950138-11-000539.

(35) Incorporated by reference to the exhibit indicated to the Company's current report on Form 8-K filed on May 23, 2011, accession No. 0001014739-11-000022.

(36) Incorporated by reference to the exhibit indicated to the Company's current report on Form 8-K filed on May 2, 2011, accession No. 0001014739-11-000015.

(37) Incorporated by reference to the exhibit indicated to the Company's current report on Form 8-K filed on May 2, 2011, accession No. 0001014739-11-000015.

(38) Incorporated by reference to the exhibit indicated to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 1999, SEC Accession No. 0000891554-99-001010.

(39) Incorporated by reference to the exhibit indicated to the Company's Current Report on Form 8-K filed on August 2, 2012, SEC Accession No. 0001193125-12-332145.

(40) Incorporated by reference to the indicated exhibit to the Company's Current Report on Form 8-K filed on April 23, 2012, SEC Accession No. 0000950138-12-000233.

*	Filed herewith.
**	Pursuant to Rule 406T of Regulation S-T, these interactive data files are deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933 or Section 18 of the Securities Exchange Act of 1934 and otherwise are not subject to liability under those sections.
Ù	Designates BioScrip, Inc.'s management contracts or compensatory plan or arrangement.
#	The Securities and Exchange Commission has granted confidential treatment of certain provisions of these exhibits. Omitted material for which confidential treatment has been granted has been filed separately with the Securities and Exchange Commission.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on December 13, 2013 .

BIOSCRIP INC.

/s/ Hai Tran
Hai Tran
Chief Financial Officer, Treasurer
and Principal Financial Officer

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

Signature	Title(s)	Date
/s/ Myron Z. Holubiak Myron Z. Holubiak	Non-Executive Chairman of the Board	December 13, 2013
/s/ Richard M. Smith Richard M. Smith	President and Chief Executive Officer (Principal Executive Officer) Director	December 13, 2013
/s/ Hai Tran Hai Tran	Chief Financial Officer and Treasurer	December 13, 2013
/s/ Patricia Bogusz Patricia Bogusz	Vice President of Finance (Principal Accounting Officer)	December 13, 2013
/s/ Charlotte W. Collins Charlotte W. Collins	Director	December 13, 2013
/s/ Samuel P. Frieder Samuel P. Frieder	Director	December 13, 2013
/s/ David R. Hubers David R. Hubers	Director	December 13, 2013
/s/ Richard L. Robbins Richard L. Robbins	Director	December 13, 2013
/s/ Stuart A. Samuels Stuart A. Samuels	Director	December 13, 2013
/s/ Gordon H. Woodward Gordon H. Woodward	Director	December 13, 2013

Bioscrip, Inc. and Subsidiaries
Schedule II-- Valuation and Qualifying Accounts
(in thousands)

	Balance at Beginning of Period	Write-Off of Receivables	Charged to Costs and Expenses	Balance at End of Period
Year ended December 31, 2010				
Allowance for doubtful accounts	$ 11,504	$ (14,420)	$ 19,337	$ 16,421
Year ended December 31, 2011				
Allowance for doubtful accounts	$ 16,421	$ (12,347)	$ 18,654	$ 22,728
Year ended December 31, 2012				
Allowance for doubtful accounts	$ 22,728	$ (27,482)	$ 26,966	$ 22,212

(Exhibits being filed with this Annual Report on Form 10-K/A)

10.14 Ù	Employment Offer Letter, dated as of June 21, 2007, by and between the Company and Pat Bogusz.
10.15 Ù	Amendment dated May 26, 2011, to the Employment Offer Letter by and between the Company and Pat Bogusz.
10.23 Ù	Employment Offer Letter, dated January 30, 2009, by and between the Company and David Evans.
10.24 Ù	Employment Offer Letter, dated January 13, 2010, by and between the Company and Vito Ponzio.
10.27	Second Amended and Restated Credit Agreement, dated as of March 17, 2011, by and among BioScrip, Inc., as borrower, all of its subsidiaries as subsidiary guarantors thereto, the lenders party thereto, Healthcare Finance Group, LLC, as administrative agent for the lenders, as collateral agent and as collateral manager for the secured parties, and the other entities party thereto.
10.29	Second Amendment to the Second Amended and Restated Credit Agreement.
21.1	List of Subsidiaries
23.1	Consent of Ernst & Young LLP
31.1	Certification of Richard M. Smith pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Hai Tran pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification of Richard M. Smith pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification of Hai Tran pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101	The following financial information from BioScrip Inc.'s Annual Report on Form 10-K for the fiscal year ended December 31, 2012, formatted in XBRL (eXtensible Business Reporting Language): (i) Statements of Income for the fiscal years ended December 31, 2012, 2011 and 2010, (ii) Balance Sheets as of December 31, 2011 and 2010, (iii) Statements of Cash Flows for the fiscal years ended December 31, 2012, 2011 and 2010, and (iv) Notes to Financial Statements.

June 21, 2007

Pat Bogusz
5141 Ewing Ave. S.
Minneapolis, MN 55410

Dear Pat,

We are pleased to extend you an offer for the position of Vice President/Controller with BioScrip, Inc. (together with its subsidiaries, the “company”), reporting to Phil Keller, Vice President of Finance. We would like your promotion to become effective on June 25, 2007.

This offer includes an annual salary of $165,000. Additionally, in your new position you will be eligible to participate in an incentive plan that is designed to deliver an annual bonus targeted at 30% of base salary. You will be entitled to four weeks (20 business days) of vacation per year. Your vacation will be earned according to the customary policies of the Company. In addition, your group life insurance coverage will increase to $300,000. You will continue to be option/grant eligible commensurate with your level of employment. Any future options and grants will be determined by the Board when they next convene.

Following commencement of your promotion, if you are terminated by the Company (or any successor) other than for “Cause” (as defined below) you will be entitled to receive severance payments equal to twelve (12) months of salary at your then current salary level, payable in accordance with the Company’s then applicable payroll practices and subject to all applicable federal, state and local withholding, and (ii) all outstanding securities contemplated to be issued under the terms of the Company’s 2001 Incentive Stock Plan granted to you and held by you at the time of termination shall vest and become immediately exercisable and shall otherwise be exercisable in accordance with their terms and conditions. If your employment with the Company is terminated for any reason whatsoever, whether by you or the Company, the Company would not be liable for, or obligated to pay you any stock or cash bonus compensation, incentive or otherwise, or any other compensation contemplated hereby not already paid or not already accrued as of the date of such termination, and no other benefits shall accrue or vest subsequent to such date.

For purposes of this Agreement, “Cause” shall mean any of the following: (i) commission by you of criminal conduct which involves moral turpitude; (ii) acts which constitute fraud or self-dealing by or on the part of you against the Company or any of its subsidiaries, including, without limitation, misappropriation or embezzlement; (iii) your willful engagement in conduct which is materially injurious to the Company or any of its subsidiaries; (iv) your gross misconduct in the performance of duties as an employee of the Company, including, without limitation, failure to obey lawful written instructions of the Board of Directors of the Company, any committee thereof or any executive officer of the Company or failure to correct any conduct which constitutes a breach of any written agreement between you and the Company or of any written policy promulgated by the Board of Directors of either the Company, any committee thereof or any executive officer of the Company, in either case after not less than ten days' notice in writing to you of the Company's intention to terminate you if such failure is not corrected within the specified period (or after such shorter notice period if the Company in good faith deems such shorter notice period to be necessary due to the possibility of material injury to the Company).

Please confirm your decision to accept this position by signing, dating, and returning this letter to me. If you have any questions regarding your promotion, please don’t hesitate to call me at 952-979-3633. Congratulations on your new position.

Sincerely,

I accept the offer of employment as stated.

/s/ Becky Skouge

Beckey Skouge — Director, Human Resources

/s/ Pat Bogusz — Pat Bogusz

6/21/07 — Date

Exhibit 10.15

May 26, 2011

Patricia Bogusz
5141 Ewing Ave. South
Minneapolis, MN 55410

Re: Amendment to Offer Letter Date June 21, 2007

This letter will confirm our discussions regarding your appointment to the position of Vice President, Finance reporting to MJ Graves. You are entitled to certain benefits as a result of your acceptance of the position. Subject to the terms and conditions of this letter, you acknowledge and understand that you are an employee at will. This letter contemplates certain changes to the offer letter originally given to you on June 21, 2007. Except as stated below, all provisions out lined in that letter remain intact.

- This offer letter includes an annual salary of $223,080 payable on a bi-weekly basis, subject to applicable taxes and other withholdings. Your new base salary is effective April 2, 2011.
- You would be eligible to participate in BioScrip's Management Incentive Bonus Program as long as you remain continuously employed with BioScrip through the date the bonus is paid. You would be eligible for a bonus of up to 30% of your base salary with the pool determined by the Company and the Board of Directors and subject to corporate, departmental and individual objectives being met.
- As a condition to your employment, you will be obligated to enter into a restrictive covenant agreement covering, among other things, non-competition provisions, non-solicitation provisions, and the protection of the Company's trade secrets. We have agreed that you will not be bound by the terms of section 3 (a) and you are free to work for a competitor. Should you however choose to accept employment with competitor, any remaining severance payments will be reduced to an amount equal to the difference between your base salary on the date of your termination and your new base salary or if your new base salary is the same or greater than your salary on the date of termination no further payments will be made.
- Subject to approval of the Compensation Committee of the board of Directors, you would be granted options to purchase 50,000 shares of the Company's common stock, par value $0.0001 per share. The exercise price of the options shall be the market price on the date the option grant is approved by the Board of Directors. The options would vest in three equal amounts at the rate of one-third per year over three years commencing on the first anniversary of the grant date.
- If you are terminated other than for "cause" as defined in your offer letter, upon execution of the Company's Standard Waiver and Release Agreement, (i) you will be eligible to receive severance payments equal to one (1) year of salary at your then current base salary payable in accordance with the Company's then applicable payroll practices and subject to all applicable federal state and local withholding, and (ii) all options contemplated to be issued under the terms of the Company's stock option plans granted and help by you at the time of termination shall vest and become immediately exercisable and shall otherwise be exercisable in accordance with their terms and conditions.

Please call me to discuss any questions or comments that you may have regarding these terms.

We are very pleased to have you as part of the Management team!

Sincerely,

/s/ Vito Ponzio, Jr

Vito Ponzio, Jr.
Senior Vice President, Human Resources
(914)460-1625 Direct
(914)564-4928 Cell
vponzio@bioscrip.com

I accept the offer as stated.

Pat Bogusz

/s/ Pat Bogusz 6-1-11
Signature Date signed

Exhibit 10.23

January 30, 2009

David J. Evans
1348 Pennsridge Place
Downingtown, PA 19335

Dear David,

We are pleased to extend an offer of employment for the position of Senior Vice President, Strategic Operations with BioScrip, Inc. (together with its subsidiaries, the "Company"), reporting to the Company's President and COO. We would like your employment to begin on February 2, 2009. Subject to the terms and conditions of this letter, you acknowledge and understand that you are an employee at will. This offer is contingent upon the satisfactory completion of background checks.

This offer includes an annual base salary of $245,000, payable on a bi-weekly basis, subject to applicable taxes and other withholdings. Your salary would be paid to you via automatic deposit to your bank account. You would initially be entitled to four weeks (20 business days) of vacation per year during your first year of employment. As an employee, your vacation will be earned according to the customary policies of the Company.

During the term of your employment, you shall be permitted, if and to the extent eligible, to participate in all employee benefits plans, policies and practices now or hereafter maintained by or on behalf of the Company, commensurate with your position and level of individual contribution, at the Company's and the Board of Director's discretion. As a point of clarification, you would be eligible for medical coverage under our benefits programs on the first of the month following your hire date.

Additionally, you would be eligible to participate in BioScrip's Management Incentive Bonus Program as long as you remain continuously employed with BioScrip through the last date of the fiscal year on which a bonus is based. You would be eligible for a bonus of up to 30% of your base salary with the pool determined by the Company and the Board of Directors and subject to corporate, departmental and individual objectives being met.

Subject to the approval of the Board of Directors, you would be granted shares of standard stock options and shares of restricted stock commensurate with your position in the company. Stock options currently vest at the rate of one-third (1/3) per year over three (3) years in equal installments. Restricted stock vests based on time and market measurements, but are subject to change from time to time with regard to future grants.

For purposes of federal immigration law, you would be required to provide, as required by rules and regulations of the U.S. Department of Justice, Immigration and Naturalization Service, documentary evidence of your identity and eligibility for employment in the United States. Such documentation must be provided within three (3) business days of your commencement date, or our employment relationship with you may be terminated.

As a condition to your employment, you would be obligated to enter into a restrictive covenant agreement (attached), covering, among other things, non-competition provisions, non-solicitation provisions, and the protection of the Company's trade secrets. In the event of an involuntary termination of your employment you will be paid your base salary as in effect on the date of your termination and be reimbursed for the cost of your health benefits continuation for a period of twelve (12) months following the date of your termination (the "Severance Period") provided that you execute the Company's standard Waiver and Release Agreement. If during the Severance Period you accept new employment, any remaining severance payments will be reduced to an amount equal to the difference between your base salary on the date of termination and your new base salary or if your new base salary is the same or greater than your new salary on the date of termination no further payments will be made. In addition, if your new employer offers health insurance reimbursement for health benefits will cease.

For clarification and the protection of both you and the Company, your acceptance of this offer represents the sole agreement between you and the Company. No prior promises, representations, and/or understandings relating to the offer of employment as set forth in this letter are to be considered part of this letter. This offer supersedes all prior offers, both verbal and written.

Please call me to discuss any questions or comments that you may have regarding these terms. Please return your paperwork by mail or fax to:

Beckey Skouge
Director of Human Resources
BioScrip
10050 Crosstown Circle
Eden Prairie, MN 55344

Direct: 952-979-3633
Fax: 952-352-6606

We are very pleased at the prospect of you joining our team!

Sincerely,

/s/ Rebecca Skouge
Rebecca Skouge, SPHR
Director of Human Resources

I accept the offer of employment as stated.

/s/ David J. Evans 1-31-09
David J. Evans Date Signed

2/2/2009
Start Date

RESTRICTIVE COVENANTS AGREEMENT

1. **Background**. BioScrip, Inc. (BioScrip or the "Company") desires to employ (or continue to employ) you and you desire to be employed (or continue to be employed) by the Company. As a condition to such employment (or continued employment) the Company requires protection of its business interests as set forth in this Restrictive Covenants Agreement (referred to herein as the "RC Agreement").

2. **Consideration**. Your acceptance of the terms of this RC Agreement is a condition of your initial or continued employment with the Company. In reliance upon this RC Agreement and your employment with the Company, the Company will provide you with one or more of the following: (i) portions of the Company's Confidential Information (through computer password or other means); (ii) authorization to contact and deal with customers and prospective customers for the development of goodwill on behalf of the Company; or, (iii) specialized training provided by or through the Company related to the Company's Business (as defined in paragraph 4 below).

3. **Covenant Against Competition; Other Covenants**. You acknowledge that (i) the principal business of Company is the provision of comprehensive pharmaceutical care solutions, including specialty pharmaceutical programs and mail order pharmacy services, pharmacy benefit management services, claims processing, purchasing of pharmaceutical products on behalf of pharmacy networks and long term care facilities and the operation of retail pharmacies; the foregoing business of the Company, and any and all other businesses that after the date hereof, and from time to time during the term of your employment with the Company, become material with respect to the Company's then-overall business, are collectively referred to as the "Business"; (ii) the Company is dependent on the efforts of a certain limited number of persons who have developed, or will be responsible for developing, the Business; (iii) the Business is national in scope; (iv) your work for the Company will give you access to the Company's Confidential Information; (v) the covenants contained in this RC Agreement (collectively, the "Restrictive Covenants") are essential to the Business as well as to the goodwill of the Company; and (vi) the Company would not have offered you employment or continued employment but for your agreement to accept and be bound by the Restrictive Covenants set forth herein. Accordingly, subject to any state specific limitations or exclusion contained herein, you covenant and agree that:

(a) Restriction on Competition. For a period of one year from the termination of your employment with the Company (by you or the Company), you shall not participate in, supervise, or manage (as an employee, consultant, agent, owner, manager, operator, partner, or in any comparable capacity) any "Competing Activities" in your "Territory." "Competing Activities" means any activities that are the same as or similar in function or purpose to those you performed or supervised performance of on behalf of the Company in the two year period preceding your termination if such activities are being undertaken for the benefit of a business (meaning a person, company, or independently operated division or unit of a company) that provides a product or service that would displace one or more of the Company's business opportunities in the line or lines of the Business in which you participated during the two year period preceding the termination of your employment. Notwithstanding the foregoing, nothing herein shall be construed to prohibit ownership as a passive investor of less than two percent (2%) of the issued and outstanding stock

of a publicly held corporation. Your relevant "Territory" is described in Exhibit A. The relevant "Line(s) of the Business" you are expected to participate in are described in Exhibit A.

(b) Restriction on Customer and Employee Solicitation. For a period of two years following the termination of your employment (by you or the Company), you shall not, without the Company's prior written consent, directly or indirectly, in person or through assisting others:

(i) for a period of two (2) years, solicit, knowingly induce or encourage any employee or independent contractor to leave the employment or other service of the Company, or hire (on your behalf or on behalf of any other person or entity) any employee or independent contractor who has left the employment or other service of the Company within one year of the termination of such employee's or independent contractor's employment or other service with the Company, or

(ii) for a period of one (1) year, solicit, contact, or engage in business related communications with (regardless of who initiates the communication), any customer, client, or referral source of the Company with whom you dealt in the two year period preceding the termination of your employment (a "Covered Customer") for the purpose of inducing or helping the Covered Customer to cease or reducing doing business for the Company or for the purpose of diverting business opportunities away from the Company, or (iii) provide services to a Covered Customer that would displace or reduce the business opportunities of the Company with the Covered Customer.

4, **Confidential Information**. During and after the term of your employment, you shall keep secret and retain in strictest confidence, and shalt not use for your benefit or the benefit of others, except in connection with the Business and the affairs of the Company, all confidential and proprietary matters relating to the Company and the Business learned by you heretofore or hereafter directly or indirectly from the Company (the "Confidential Information"), including, without limitation, information or compilations of information with respect to (i) the strategic plans, budgets, forecasts, intended expansions of product, service, or geographic markets of the Company, (ii) sales figures, contracts, agreements, and undertakings with or with respect to customers, (iii) profit or loss figures, and (iv) customers, clients, suppliers, sources of supply and customer lists, and shall not disclose such Confidential Information to anyone outside of the Company except with the Company's express written consent and except for Confidential Information which is at the time of receipt or thereafter becomes publicly known through no wrongful act of you or is received from a third party not under an obligation to keep such information confidential and without breach of this RC Agreement. A compilation or list of information maintained in confidence by the Company (like a customer list) will be considered Confidential Information irrespective of whether it may contain some items of information that would otherwise be publicly available because such a compilation has special value and utility in its compiled form. Notwithstanding the foregoing, the non-disclosure obligations of this RC Agreement will not apply to the extent that you are acting to the extent necessary to comply with legal process; provided that in the event that you are subpoenaed to testify or to produce any information or documents before any court, administrative agency or other tribunal relating to any aspect pertaining to the Company, you shall immediately notify the Company thereof.

All memoranda, notes, lists, records, property and any other tangible product and documents (and all copies thereof) made, produced or compiled by you or made available to you concerning the Company and its Business shall be the Company's property and shall be delivered to the Company at any time on request.

5. **Employment Status and Loyalty**. You acknowledge that except as may be set forth in a written agreement between you and the Company, your employment with the Company is "at will" meaning that both parties (you and the Company) retain the right to terminate the employment relationship at any time. Nothing in this RC Agreement shall be construed to the contrary. During your employment you will abide by all of the restrictions placed upon you in this RC Agreement, will avoid conflicts of interest, and will not engage in any form of competition with the Company. You understand and agree that even though you may have additional employment that does not violate the provisions of this RC Agreement, if your position with another employer impedes or otherwise adversely affects your job performance with the Company, you may be terminated for performance reasons. By way of example, if you moonlight or work elsewhere during the evenings and you are too tired during the day to perform your duties and responsibilities for the Company, you may be terminated.

6. **Rights and Remedies upon Breach of Restrictive Covenants**.

You acknowledge and agree that any breach by you of any of the Restrictive Covenants would result in irreparable injury and damage to the Company for which money damages would not provide an adequate remedy. Therefore, if you breach any of the Restrictive Covenants, the Company shall have the following rights and remedies, each of which rights and remedies shall be independent of the other and severally enforceable, and all of which rights and remedies shall be in addition to, and not in lieu of, any other rights and remedies available to the Company under law or in equity (including, without limitation, the recovery of damages).

(a) The right and remedy to have the Restrictive Covenants specifically enforced (without posting bond and without the need to prove damages) by any court having equity jurisdiction, including, without limitation, the right to an entry against you of restraining orders and injunctions (preliminary, mandatory, temporary and permanent) against violations, threatened or actual, and whether or not then continuing, of such Restrictive Covenants; provided, however, that where a bond is required by law for an injunction to issue, the agreed upon bond shall be $1,000.

(b) The right and remedy to require you to account for and pay over to the Company all compensation, profits, monies, accruals, increments or other benefits (collectively, "Benefits") derived or received by you as the result of any transactions constituting a breach of the Restrictive Covenants, and you shall account for and pay over such Benefits to the Company. This remedy shall be in addition to, and not in lieu of, injunctive relief to prevent further harm and does not represent a complete or satisfactory remedy standing alone.

You agree that in any action seeking specific performance or other equitable relief, you will not assert or contend that any of the provisions of these Restrictive Covenants are unreasonable or otherwise unenforceable. The existence of any claim or cause of action by you, whether predicated

on the RC Agreement or otherwise, shall not constitute a defense to the enforcement of the Restrictive Covenants.

7. **Severability and Choice of Law**.

If any of the Restrictive Covenants in this Agreement are found unenforceable as written, the Court shall reform the unenforceable restriction(s) so as to make same fully enforceable to the maximum extent of the law within the state or other geographic jurisdiction of the Court; and, the Agreement shall otherwise be enforced in accordance with its terms outside said state or jurisdiction. The law of the State of Delaware shall control the interpretation, application, and enforcement of this Agreement without regard or respect for any choice of law principles to the contrary of Delaware or of the state where you may reside at the time of enforcement.

Effective as of February 2, 2009.

Agreed:

BioScrip, Inc.

By: /s/ Rebecca Skouge
Name: Rebecca Skouge
Title: Director of Human Resources

1-30-09
Date

Employee

/s/ David J. Evans
Signature

David J. Evans
Printed Name

1-31-2009
Date

Exhibit A

1. State Specific Limitations.

The following shall apply to you only if you reside in one of the states described below:

(a) California. While you are a resident in and subject to the laws of California, (1) the restrictions in Section 3(a) ("Restriction on Competition") will not apply to you, and (2) the restrictions in Section 3(b) ("Restriction on Customer and Employee Solicitation") of the RC Agreement will be modified to provide that during the proscribed two year period following termination of employment you will not (i) solicit, knowingly induce or encourage any employee or independent contractor to leave the employment or other service of the Company, or (ii) use Confidential Information to solicit, contact, or engage in business related communications with (regardless of who initiates the communication), any customer, client, or referral source of the Company with whom you dealt in the two year period preceding the termination of your employment (a "Covered Customer") for the purpose of inducing or helping the Covered Customer to cease or reducing doing business for the Company or for the purpose of diverting business opportunities away from the Company.

(b) Georgia or Wisconsin. While you are a resident in and subject to the laws of Georgia or Wisconsin, (1) the restrictions against use of disclosure of Confidential Information contained in Section 4, shall apply to information that does not qualify as a trade secret for• a period of three years following the termination of your employment, and shall apply to information that does qualify as a trade secret for as long as said information continues to qualify as a trade secret under applicable law, and (2) the restrictions in Section 3(a) of the RC Agreement will not apply to you.

2. Your Territory.

Your assigned Territory is: each state within the United States where Employee helps the Company do business, which at this time is understood to include all states located within the Continental United States.

3. Relevant Line(s) of Business.

The Line(s) of the Business applicable to you are: Specialty Pharmacy (including retail and mail) and Infusion Services, it being understood that the nature of Employee's position is one that involves substantial involvement in all of the Company's Lines of Business. It is understood that your decision to remain employed with the Company after notification of assignment to a new or additional Territory or the inclusion of a new Line of Business within the scope of your duties, shall be deemed an acceptance of the amendment of this RC Agreement to add the additional geography of such new territory to the Territory covered by this RC Agreement, and/or the addition of such new Line of Business to the Line(s) of Business covered by this RC Agreement as it relates to you.

Understood and agreed:

/s/ David J. Evans
Signature

David J. Evans
Printed Name

1-31-09
Date

FORM OF SEVERANCE AGREEMENT

February 2, 2009

David J. Evans
1348 Pennsridge Place
Downingtown, PA 19335

Re: Severance Agreement

Dear David:

This will confirm our agreement that, following the commencement date of your employment with BioScrip, Inc. (the Company"), if you are terminated by the Company (or any successor) other than for "Cause" (as defined below), upon execution of the Company's standard Waiver and Release Agreement (i) you will be entitled to receive severance payments equal to one (1) year of salary at your then current base salary level, payable in accordance with the Company's then applicable payroll practices and subject to all applicable federal, state and local withholding, and (ii) the Company will reimburse you for the cost of continuing your health benefits under COBRA (at the same benefit level and coverage as in effect immediately prior to termination) for a period of one (1) year following the date of your termination. Notwithstanding the foregoing, if during the one (1) year period following your termination you accept new employment, any remaining severance payments will be reduced to an amount equal to the difference between your base salary on the date of termination and your new base salary or if your new base salary is the same or greater than your new salary on the date of termination no further payments will be made. In addition, if your new employer offers health insurance the Company will no longer be obligated to reimburse you for health insurance coverage effective on the date you start such new employment. If your employment with the Company is terminated for any reason whatsoever, whether by you or the Company, the Company would not be liable for, or obligated to pay you any stock or cash bonus compensation, incentive or otherwise, or any other compensation contemplated hereby not already paid or not already accrued as of the date of such termination, and no other benefits shall accrue or vest subsequent to such date.

For purposes of this Agreement, "Cause" shall mean any of the following: (i) commission by you of criminal conduct which involves moral turpitude; (ii) acts which constitute fraud or self-dealing by or on the part of you against the Company or any of its subsidiaries, including, without limitation, misappropriation or embezzlement; (iii) your willful engagement in conduct which is materially injurious to the Company or any of its subsidiaries; (iv) your gross misconduct in the performance of duties as an employee of the Company, including, without limitation, failure to obey lawful written instructions of the Board of Directors of the Company, any committee thereof or any

executive officer of the Company or failure to correct any conduct which constitutes a breach of any written agreement between you and the Company or of any written policy promulgated by the Board of Directors of either the Company, any committee thereof or any executive officer of the Company, in either case after not less than ten days' notice in writing to you of the Company's intention to terminate you if such failure is not corrected within the specified period (or after such shorter notice period if the Company in good faith deems such shorter notice period to be necessary due to the possibility of material possibility of material injury to the Company).

This letter agreement constitutes the entire understanding of the parties with respect to the subject matter hereof. This agreement shall be construed in accordance with, and its interpretation shall otherwise be governed by, the laws of the State of New York, without giving effect to principles of conflicts of law.

Kindly signify your agreement to the foregoing by signing below and forward an executed copy to me for our files.

Sincerely,

BioScrip, Inc.

By: _____
Barry A. Posner, EVP and General Counsel

Agreed and Accepted
on this ___ day of _____, 2009:

_____
David Evans

Exhibit 10.24

January 13, 2010

Vito Ponzio, Jr.
751 Williams Street
Denver, Co 80218

Re: BioScrip, Inc. and Subsidiaries

Dear Vito:

BioScrip, Inc., a Delaware corporation (the "Company"), is pleased to offer you employment as the Company's Senior Vice President — Community Operations, according to the terms and subject to the conditions set forth below. The terms and conditions of your employment would be as follows:

1. **POSITION AND DUTIES**:	Senior Vice President (SVP) — Community Operations You would report to, and would have such duties as assigned to you from time to time by the Company's Chief Operating Officer and President. You acknowledge and understand that you are an employee at will.
2. **BASE COMPENSATION**:	Your annual base salary would be $240,000 payable bi-weekly or at such other times as other employees of the Company are paid. Your performance and base salary shall be reviewed annually according to company practice.
3. **PARTICIPATION IN HEALTH AND OTHER BENEFIT PLANS**:	During your employment with the Company, you would be eligible to participate in all employee benefit plans, policies and practices now or hereafter maintained by or on behalf of the Company and its subsidiary and affiliate corporations, commensurate with your position and level of individual contribution, at the Company's discretion, in accordance with their respective terms and conditions. The Company may terminate or amend any such plans or coverage so as to eliminate; reduce or otherwise change any benefit payable there under.
4. **BONUS**:	You would be eligible to participate in BioScrip's Management Short-term Cash Bonus Program as long you remain continuously employed with BioScrip through the last date of the fiscal year on which a bonus is based. Your target bonus would be at level of 30% of your base salary in 2010, pro rated for the number of days in which you were employed in 2010, and which would be based on individual targets recommended by the Chief Operating Officer and President and approved by the Chief Executive Officer and approved by the Board of Directors. Any bonus, if payable, shall be paid as and when bonuses are paid to management generally, but in any event, no later than 30 days after the completion of the Company's prior year audit.

5. **EXPENSES**:	Subject to such policies as may from time to time be established by the Company's management, the Company would pay or reimburse you for all reasonable and necessary expenses actually incurred or paid by you during your employment upon submission and approval of expense statements, vouchers or other reasonable supporting information in accordance with the then customary practices of the Company. If a business expense reimbursement is not exempt from Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), any reimbursement in one calendar year shall not affect the amount that may be reimbursed in any other calendar year and a reimbursement (or right thereto) may not be exchanged or liquidated for another benefit or payment. Any business expense reimbursements subject to Section 409A of the Code shall be made no later than the end of the calendar year following the calendar year in which such business expense is incurred by the Executive.
6. **EQUITY COMPENSATION**:	Subject to approval of the Compensation Committee of the Board of Directors, you would be granted (i) 50,000 stock options to purchase the Company's common stock, par value $0.0001 per share of the Company, which would be awarded at the current market price on the date your employment commenced. As a consequence of having received this sign on grant, you will not be eligible to receive a long-term incentive compensation award until 2011.
7. **VACATION**:	You would initially be entitled to four weeks (20 business days) vacation per year during the term of your employment.
8. **FEDERAL IMMIGRATION LAW**:	For purposes of federal immigration law, you would be required to provide to the Company documentary evidence of your identity and eligibility for employment in the United States. Such documentation must be provided to us within three (3) business days of your commencement date, or our employment relationship with you may be terminated. If it is not received within such three (3) day period, you will not be able to continue employment with the Company until such time as the appropriate documentation is provided.
9. **RESTRICTIVE COVENANT**:	As a condition to your employment with the Company, you will be obligated to enter into a restrictive covenant agreement between you and the Company, covering, among other things, non-competition provisions, non-solicitation provisions, and the protection of the Company's trade secrets. That agreement is attached in the form attached hereto as Exhibit A.
10. **OTHER TERMS**:	You would be entitled to severance under the terms of a Severance letter attached hereto as Exhibit B.

This offer supersedes all prior offers, both verbal and written. Please call me at 914-460-1622 to discuss any questions or comments that you may have regarding these terms. Please return your paperwork by mail or fax to:

BioScrip, Inc.
Attn: Lisa Nadler
100 Clearbrook Road
Elmsford, NY 10523
Fax: 914-460-1670

We are very pleased to have you join us and I am personally looking forward to working with you!

Sincerely yours,

BIOSCRIP, INC.

By: /s/ Lisa Nadler

Agreed to and accepted by:

/s/ Vito Ponzio, Jr.
Vito Ponzio, Jr.

EXHIBIT A

RESTRICTIVE COVENANTS
(Attachment to Offer Letter of Vito Ponzio, Jr.)

1. **Background**. BioScrip, Inc. (BioScrip or the "Company") desires to employ (or continue to employ) you and you desire to be employed (or continue to be employed) by the Company. As a condition to such employment (or continued employment) the Company requires protection of its business interests as set forth in this Restrictive Covenants Agreement (referred to herein as the "RC Agreement").

2. **Consideration**. Your acceptance of the terms of this RC Agreement is a condition of your initial or continued employment with the Company. In reliance upon this RC Agreement and your employment with the Company, the Company will provide you with one or more of the following: (i) portions of the Company's Confidential Information (through computer password or other means); (ii) authorization to contact and deal with customers and prospective customers for the development of goodwill on behalf of the Company; or, (iii) specialized training provided by or through the Company related to the Company's Business (as defined in paragraph 4 below).

3. **Covenant Against Competition; Other Covenants**. You acknowledge that (i) the principal business of Company is the provision of comprehensive pharmaceutical care solutions, including specialty pharmaceutical programs and mail order pharmacy services, pharmacy benefit management services, claims processing, purchasing of pharmaceutical products on behalf of pharmacy networks and long term care facilities and the operation of retail pharmacies; the foregoing business of the Company, and any and all other businesses that after the date hereof, and from time to time during the term of your employment with the Company, become material with respect to the Company's then-overall business, are collectively referred to as the "Business"; (ii) the Company is dependent on the efforts of a certain limited number of persons who have developed, or will be responsible for developing, the Business; (iii) the Business is national in scope; (iv) your work for the Company will give you access to the Company's Confidential Information; (v) the covenants contained in this RC Agreement (collectively, the "Restrictive Covenants") are essential to the Business as well as to the goodwill of the Company; and (vi) the Company would not have offered you employment or continued employment but for your agreement to accept and be bound by the Restrictive Covenants set forth herein. Accordingly, subject to any state specific limitations or exclusion contained herein, you covenant and agree that:

(a) Restriction on Competition. For a period of one year from the termination of your employment with the Company (by you or the Company), you shall not participate in, supervise, or manage (as an employee, consultant, agent, owner, manager, operator, partner, or in any comparable capacity) any "Competing Activities" in your 'Territory." "Competing Activities" means any activities that are the same as or similar in function or purpose to those you performed or supervised performance of on behalf of the Company in the two year period preceding your termination if such activities are being undertaken for the benefit of a business (meaning a person, company, or independently operated division or unit of a company) that provides a product or service that would displace one or more of the Company's business opportunities in the line or lines of the Business in which you participated during the two year period preceding the termination of your employment. Notwithstanding the foregoing, nothing herein shall be construed to prohibit ownership as a passive investor of less than two percent (2%) of the issued and outstanding stock

of a publicly held corporation. Your relevant "Territory" is described in Attachment A. The relevant "Line(s) of the Business" you are expected to participate in are described in Exhibit A.

(b) Restriction on Customer and Employee Solicitation. For a period of two years following the termination of your employment (by you or the Company), you shall not, without the Company's prior written consent, directly or indirectly, in person or through assisting others:

(i) solicit, knowingly induce or encourage any employee or independent contractor to leave the employment or other service of the Company, or hire (on your behalf or on behalf of any other person or entity) any employee or independent contractor who has left the employment or other service of the Company within one year of the termination of such employee's or independent contractor's employment or other service with the Company, or

(ii) solicit, contact, or engage in business related communications with (regardless of who initiates the communication), any customer, client, or referral source of the Company with whom you dealt in the two year period preceding the termination of your employment (a "Covered Customer") for the purpose of inducing or helping the Covered Customer to cease or reducing doing business for the Company or for the purpose of diverting business opportunities away from the Company, or (iii) provide services to a Covered Customer that would displace or reduce the business opportunities of the Company with the Covered Customer.

4. **Confidential Information**. During and after the term of your employment, you shall keep secret and retain in strictest confidence, and shall not use for your benefit or the benefit of others, except in connection with the Business and the affairs of the Company, all confidential and proprietary matters relating to the Company and the Business learned by you heretofore or hereafter directly or indirectly from the Company (the "Confidential Information"), including, without limitation, information or compilations of information with respect to (i) the strategic plans, budgets, forecasts, intended expansions of product, service, or geographic markets of the Company, (ii) sales figures, contracts, agreements, and undertakings with or with respect to customers, (iii) profit or loss figures, and (iv) customers, clients, suppliers, sources of supply and customer lists, and shall not disclose such Confidential Information to anyone outside of the Company except with the Company's express written consent and except for Confidential Information which is at the time of receipt or thereafter becomes publicly known through no wrongful act of you or is received from a third party not under an obligation to keep such information confidential and without breach of this RC Agreement. A compilation or list of information maintained in confidence by the Company (like a customer list) will be considered Confidential Information irrespective of whether it may contain some items of information that would otherwise be publicly available because such a compilation has special value and utility in its compiled form. Notwithstanding the foregoing, the non-disclosure obligations of this RC Agreement will not apply to the extent that you are acting to the extent necessary to comply with legal process; provided that in the event that you are subpoenaed to testify or to produce any information or documents before any court, administrative agency or other tribunal relating to any aspect pertaining to the Company, you shall immediately notify the Company thereof.

All memoranda, notes, lists, records, property and any other tangible product and documents (and all copies thereof) made, produced or compiled by you or made available to you concerning the Company and its Business shall be the Company's property and shall be delivered to the Company at any time on request.

5. **Employment Status and Loyalty**. You acknowledge that except as may be set forth in a written agreement between you and the Company, your employment with the Company is "at will" meaning that both parties (you and the Company) retain the right to terminate the employment relationship at any time. Nothing in this RC Agreement shall be construed to the contrary. During your employment you will abide by all of the restrictions placed upon you in this RC Agreement, will avoid conflicts of interest, and will not engage in any form of competition with the Company. You understand and agree that even though you may have additional employment that does not violate the provisions of this RC Agreement, if your position with another employer impedes or otherwise adversely affects your job performance with the Company, you may be terminated for performance reasons. By way of example, if you moonlight or work elsewhere during the evenings and you are too tired during the day to perform your duties and responsibilities for the Company, you may be terminated.

6. **Rights and Remedies upon Breach of Restrictive Covenants**.

You acknowledge and agree that any breach by you of any of the Restrictive Covenants would result in irreparable injury and damage to the Company for which money damages would not provide an adequate remedy. Therefore, if you breach, or threaten to commit a breach of, any of the Restrictive Covenants, the Company shall have the following rights and remedies, each of which rights and remedies shall be independent of the other and severally enforceable, and all of which rights and remedies shall be in addition to, and not in lieu of, any other rights and remedies available to the Company under law or in equity (including, without limitation, the recovery of damages).

(a) The right and remedy to have the Restrictive Covenants specifically enforced (without posting bond and without the need to prove damages) by any court having equity jurisdiction, including, without limitation, the right to an entry against you of restraining orders and injunctions (preliminary, mandatory, temporary and permanent) against violations, threatened or actual, and whether or not then continuing, of such Restrictive Covenants; provided, however, that where a bond is required by law for an injunction to issue, the agreed upon bond shall be $1,000,

(b) The right and remedy to require you to account for and pay over to the Company all compensation, profits, monies, accruals, increments or other benefits (collectively, "Benefits") derived or received by you as the result of any transactions constituting a breach of the Restrictive Covenants, and you shall account for and pay over such Benefits to the Company. This remedy shall be in addition to, and not in lieu of, injunctive relief to prevent further harm and does not represent a complete or satisfactory remedy standing alone.

You agree that in any action seeking specific performance or other equitable relief, you will not assert or contend that any of the provisions of these Restrictive Covenants are unreasonable or otherwise unenforceable. The existence of any claim or cause of action by you, whether predicated on the RC Agreement or otherwise, shall not constitute a defense to the enforcement of the Restrictive Covenants.

7. **Severability and Choice of Law**.

If any of the Restrictive Covenants in this Agreement are found unenforceable as written, the Court shall reform the unenforceable restriction(s) so as to make same fully enforceable to the maximum extent of the law within the state or other geographic jurisdiction of the Court; and, the Agreement shall otherwise

be enforced in accordance with its terms outside said state or jurisdiction. The law of the State of Delaware shall control the interpretation, application, and enforcement of this Agreement without regard or respect for any choice of law principles to the contrary of Delaware or of the state where you may reside at the time of enforcement.

Effective as of January 18, 2010.

Agreed:

BioScrip, Inc.

By: /s/ Lisa Nadler
Name: Lisa Nadler
Title: SVP, Human Resources

January 22, 2010
Date

Employee

/s/ Vito Ponzio, Jr.
Signature

Vito Ponzio, Jr.
Printed Name

January 18, 2010
Date

Attachment A

1. State Specific Limitations.

The following shall apply to you only if you reside in one of the states described below:

(a) California. While you are a resident in and subject to the laws of California, (1) the restrictions in Section 3(a) ("Restriction on Competition") will not apply to you, and (2) the restrictions in Section 3(b) ("Restriction on Customer and Employee Solicitation") of the RC Agreement will be modified to provide that during the proscribed two year period following termination of employment you will not (i) solicit, knowingly induce or encourage any employee or independent contractor to leave the employment or other service of the Company, or (ii) use Confidential Information to solicit, contact, or engage in business related communications with (regardless of who initiates the communication), any customer, client, or referral source of the Company with whom you dealt in the two year period preceding the termination of your employment (a "Covered Customer") for the purpose of inducing or helping the Covered Customer to cease or reducing doing business for the Company or for the purpose of diverting business opportunities away from the Company.

(b) Georgia or Wisconsin. While you are a resident in and subject to the laws of Georgia or Wisconsin, (1) the restrictions against use of disclosure of Confidential Information contained in Section 4, shall apply to information that does not qualify as a trade secret for a period of three years following the termination of your employment, and shall apply to information that does qualify as a trade secret for as long as said information continues to qualify as a trade secret under applicable law, and (2) the restrictions in Section 3(a) of the RC Agreement will not apply to you.

2. Your Territory.

Your relevant Territory is _____

3. Relevant Line(s) of Business.

The Line(s) of the Business applicable to you are: _____. It is understood that your decision to remain employed with the Company after notification of assignment to a new or additional Territory or the inclusion of a new Line of Business within the scope of your duties, shall be deemed an acceptance of the amendment of this RC Agreement to add the additional geography of such new territory to the Territory covered by this RC Agreement, and/or the addition of such new Line of Business to the Line(s) of Business covered by this RC Agreement as it relates to you.

Understood and agreed:

/s/ Vito Ponzio, Jr.
Signature

Vito Ponzio, Jr.
Printed Name

January 18, 2010
Date

EXHIBIT B

SEVERANCE POLICY

(Attachment to Offer Letter of Vito Ponzio, Jr.)

This will confirm our agreement that, following the commencement date of your employment with BioScrip, Inc. (the Company"), if you are terminated by the Company (or any successor) other than for "Cause" (as defined below), upon execution of the Company's standard Waiver and Release Agreement (i) you will be entitled to receive severance payments equal to twelve 12 months of salary at your then current base salary level, payable in accordance with the Company's then applicable payroll practices and subject to all applicable federal, state and local withholding. Notwithstanding the foregoing, if following your termination you accept new employment, any remaining severance payments will be reduced to an amount equal to the difference between your base salary on the date of termination and your new base salary or if your new base salary is the same or greater than your new salary on the date of termination no further payments will be made. If your employment with the Company is terminated for any reason whatsoever, whether by you or the Company, the Company would not be liable for or obligated to pay you any stock or cash bonus compensation, incentive or otherwise, or any other compensation contemplated hereby not already paid or not already accrued as of the date of such termination, and no other benefits shall accrue or vest subsequent to such date.

For purposes of this Agreement, "Cause" shall mean any of the following: (i) commission by you of criminal conduct which involves moral turpitude; (ii) acts which constitute fraud or self-dealing by or on the part of you against the Company or any of its subsidiaries, including, without limitation, misappropriation or embezzlement; (iii) your willful engagement in conduct which is materially injurious to the Company or any of its subsidiaries; (iv) your gross misconduct in the performance of duties as an employee of the Company, including, without limitation, failure to obey lawful written instructions of the Board of Directors of the Company, any committee thereof or any executive officer of the Company or failure to correct any conduct which constitutes a breach of any written agreement between you and the Company or of any written policy promulgated by the Board of Directors of either the Company, any committee thereof or any executive officer of the Company, in either case after not less than ten days' notice in writing to you of the Company's intention to terminate you if such failure is not corrected within the specified period (or after such shorter notice period if the Company in good faith deems such shorter notice period to be necessary due to the possibility of material injury to the Company).

This letter agreement constitutes the entire understanding of the parties with respect to the subject matter hereof. This agreement shall be construed in accordance with, and its interpretation shall otherwise be governed by, the laws of the State of New York, without giving effect to principles of conflicts of law.

Kindly signify your agreement to the foregoing by signing below and forward an executed copy to me for our files.

By: /s/ Lisa Nadler
Lisa Nadler, SVP Human Resources

Agreed and Accepted

on this 18 day of January, 2010:

/s/ Vito Ponzio, Jr.
Vito Ponzio, Jr.

SECOND AMENDED AND RESTATED CREDIT AGREEMENT

dated as of March 25, 2010,

as

Amended and Restated as of December 28, 2010

and as

AMENDED AND RESTATED

as of March 17, 2011

among

BIOSCRIP, INC.,

as Borrower,

and

THE GUARANTORS PARTY HERETO,

as Guarantors,

HFG HEALTHCO-4, LLC,

WELLS FARGO CAPITAL FINANCE, LLC

and

SIEMENS FINANCIAL SERVICES, INC.

as Lenders

HFG HEALTHCO-4, LLC,

as Swingline Lender,

WELLS FARGO CAPITAL FINANCE, LLC,

as Documentation Agent and Issuing Lender

and

HEALTHCARE FINANCE GROUP, LLC,

as Sole Lead Arranger, Administrative Agent, Collateral Agent and Collateral Manager

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SECOND AMENDED AND RESTATED CREDIT AGREEMENT

This SECOND AMENDED AND RESTATED CREDIT AGREEMENT, dated as of March 25, 2010, as amended and restated as of December 28, 2010 and as further AMENDED AND RESTATED as of March 17, 2011 (as so Amended and Restated, and as it may be further amended, supplemented or otherwise modified from time to time, this "**Agreement**"), among BIOSCRIP INC., a Delaware corporation (the "**Borrower**"), the Subsidiary Guarantors (such term and each other capitalized term used but not defined herein having the meaning given to it in Article I), the Lenders, HEALTHCARE FINANCE GROUP, LLC as successor to Jefferies Finance LLC ("**Jefferies**"), (i) as Sole Lead Arranger (in such capacity, the "**Arranger**"), (ii) as administrative agent for the Lenders (in such capacity, the "**Administrative Agent**"), and (iii) as collateral agent for the Secured Parties (in such capacity, the "**Collateral Agent**"), HEALTHCARE FINANCE GROUP, LLC, as collateral manager (in such capacity, the "**Collateral Manager**"), HFG HEALTHCO-4, LLC ("**HF-4**"), WELLS FARGO CAPITAL FINANCE, LLC ("**WFCF**") and SIEMENS FINANCIAL SERVICES, INC. as Lenders (together with their successors and assigns permitted hereunder, each a "**Lender**" and collectively, the "**Lenders**"), HFG HEALTHCO-4, LLC, as swingline lender (in such capacity, the "**Swingline Lender**") for the Lenders, WELLS FARGO CAPITAL FINANCE, LLC, as Documentation Agent (in such capacity "**Documentation Agent**"), and WELLS FARGO CAPITAL FINANCE, LLC as Issuing Lender for the Lenders (in such capacity, the "**Issuing Lender**").

WITNESSETH:

WHEREAS, Borrower has entered into a merger agreement, dated as of January 24, 2010 (as it may have been amended, supplemented or otherwise modified prior to the Closing Date, the "**Acquisition Agreement**"), with Camelot Acquisition Corp., a Delaware corporation ("**Merger Sub**"), Critical Homecare Solutions Holdings, Inc., a Delaware corporation (the "**Target**"), Kohlberg Investors V, L.P., solely in its capacity as the stockholders' representative, and Kohlberg Partners V, L.P., a Delaware limited partnership, Kohlberg Offshore Investors V, L.P., a Delaware limited partnership, Kohlberg TE Investors V, L.P., a Delaware limited partnership, KOCO Investors V, L.P., a Delaware limited partnership, Robert Cucuel, Mary Jane Graves, Nitin Patel, Joey Ryan, Blackstone Mezzanine Partners II L.P., a Delaware limited partnership, Blackstone Mezzanine Holdings II L.P., a Delaware limited partnership, and S.A.C. Domestic Capital Funding, Ltd., a Cayman Islands limited company, each a selling stockholder, pursuant to which it acquired on the Closing Date (the "**Acquisition**") the capital stock of the Target by means of a merger between Merger Sub and Target.

WHEREAS, immediately following the Acquisition and as of the Closing Date, (i) the Target became a Wholly Owned Subsidiary of Borrower, (ii) the Target became a Subsidiary Guarantor and Pledgor for all purposes under the Loan Documents, and (iii) each Subsidiary of the Target became a Subsidiary Guarantor and Pledgor for all purposes under the Loan Documents.

WHEREAS, in order to fund, in part, the consummation of the Acquisition and the repayment of outstanding indebtedness of Borrower and its Subsidiaries and Target and its Subsidiaries listed on Schedule 1.01(e) (the "**Refinancing**"), Borrower and the Lenders entered into this Agreement (as in effect immediately prior to the Restatement Date, the "**Existing Credit Agreement**") pursuant to which on the Closing Date (i) certain Lenders extended term loan credit, (ii) certain Lenders extended revolving credit, and (iii)the Swingline Lender agreed to make Swingline Loans, all subject and pursuant to the terms and conditions set forth in the Existing Credit Agreement, the proceeds of which were utilized on the Closing Date in accordance with Section 3.12.

WHEREAS, in order to fund, in part, the consummation of the Acquisition and the Refinancing, on the Closing Date, Borrower issued $225,000,000 in aggregate principal amount of Senior Notes to certain qualified purchasers in a transaction exempt from the registration requirements of the Securities Act.

WHEREAS, in order to best meet the ongoing and future capital needs of Borrower and Subsidiary Guarantors, the parties hereto amended and restated the Existing Credit Agreement in the manner set forth herein on the Restatement Date (as so amended and restated, and as in effect immediately prior to the Amendment Date, the "**First A&R Credit Agreement**").

WHEREAS, Borrower and the Lenders are entering into this amendment and restatement of the First A&R Credit Agreement in connection with the syndication of the Revolving Commitments and WFCF becoming the Issuing Lender hereunder.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and in the other Loan Documents, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree to AMEND AND RESTATE the First A&R Credit Agreement on the Amendment Date in its entirety as follows:

Article I
DEFINITIONS

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

"**ABDC** means AmerisourceBergen Drug Corporation, a Delaware corporation, and its successors and assigns.

"**ABDC Intercreditor Agreement**" shall mean the Intercreditor Agreement, dated as of the Closing Date, between the Collateral Agent (for the benefit of the Secured Parties) and ABDC, concerning the subordination of the ABDC Lien, substantially in the form of the Supplier Intercreditor Agreement, as amended, supplemented, waived or otherwise modified from time to time in accordance with the terms hereof and thereof.

"**ABDC Lien**" shall mean the Lien of ABDC on the Inventory of Borrower and its Subsidiaries (to the extent sold or supplied by ABDC), related Accounts and the products and proceeds thereof, as described more particularly and defined in the definition of "Second Priority Collateral" (as defined in the ABDC Intercreditor Agreement) and, in all events, subject to the provisions of the ABDC Intercreditor Agreement.

"**Accounts**" shall have the meaning assigned to such term in the Security Agreement.

"***Accounts Receivable Turnover***" means, at the end of any Test Period, the quotient obtained by dividing (i) aggregate net Receivables of Borrower as presented on its balance sheet averaged for the three-Month period then ended for such Test Period, by (ii) an amount equal to the aggregate net revenue of Borrower for the 12 -Month period then ended for such Test Period, divided by 365 days.

"**Accreditations**" shall mean collectively all accreditations, approvals or other rights issued by any health care accrediting agency including the Joint Commission, Accreditation Commission for Health Care, National Quality Forum and Community Health Accreditation Program.

"**Accrued Amounts**" shall mean, as of any date of determination, the aggregate amount of accrued but unpaid (whether or not due and payable) (a) interest on Loans that will become due and payable on or prior to the next Interest Payment Date, (b) fees and expenses that will become due and payable on or prior to the next Interest Payment Date, in each case, to the extent constituting Obligations.

"**Acquisition**" shall have the meaning assigned to such term in the recitals hereto, and as the context requires.

"**Acquisition Agreement**" shall have the meaning assigned to such term in the recitals hereto.

"**Acquisition Consideration**" shall mean the purchase consideration for a Permitted Acquisition and all other payments, directly or indirectly, by any Company in exchange for, or as part of, or in connection with, a Permitted Acquisition, whether paid in cash or by exchange of Equity Interests or of properties or otherwise and whether payable at or prior to the consummation of a Permitted Acquisition or deferred for payment at any future time, whether or not any such future payment is subject to the occurrence of any contingency, and includes any and all payments representing the purchase price and any assumptions of Indebtedness, "earn-outs" and other agreements to make any payment the amount of which is, or the terms of payment of which are, in any respect subject to or contingent upon the revenues, income, cash flow or profits (or the like) of any person or business; *provided* that any such future payment that is subject to a contingency shall be considered Acquisition Consideration only to the extent of the reserve, if any, required under GAAP at the time of the consummation of such Permitted Acquisition to be established in respect thereof by the Companies.

"**Acquisition Documents**" shall mean the collective reference to the Acquisition Agreement and the other documents listed or required to be listed on Schedule 3.22.

"**Adjusted LIBOR Rate**" shall mean as of any day in a Month with respect to any Borrowing, the higher of (i) (a) an interest rate per annum (rounded upward, if necessary, to the next 1/100th of 1%) determined by the Administrative Agent to be equal to the LIBOR Rate for such Month, *divided by* (b) 1 *minus* the Statutory Reserves (if any) for such Borrowing and (ii) 1.25%.

"**Administrative Agent**" shall have the meaning assigned to such term in the preamble hereto and includes each other person appointed as the successor administrative agent pursuant to Article X.

"**Administrative Agent Fees**" shall have the meaning assigned to such term in Section 2.05(c).

"**Administrative Questionnaire**" shall mean an administrative questionnaire in the form supplied from time to time by the Administrative Agent.

"**Advisors**" shall mean legal counsel (including local counsel and in-house counsel), auditors, engineers, accountants, consultants, appraisers or other advisors.

"**Affiliate**" shall mean, when used 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; *provided*, *however*, that, for purposes of Section 6.09, the term "Affiliate" shall also include any person that directly or indirectly owns more than 10% of any class of Equity Interests of the person specified.

"**Agents**" shall mean the Arranger, the Administrative Agent, the Documentation Agent, the Collateral Agent and the Collateral Manager; and "**Agent**" shall mean any of them, as the context may require.

"**Agreement**" shall have the meaning assigned to such term in the preamble hereto.

"**Alternate Base Rate**" shall mean, for any day, a rate per annum (rounded upward, if necessary, to the next 1/100th of 1%) equal to the greatest of (a) the Base Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day *plus* 0.50%, and (c) 1.50%. If the Administrative Agent shall have determined in its reasonable discretion (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Base Rate or the Federal Funds Effective Rate shall be effective on the effective date of such change in the Base Rate or the Federal Funds Effective Rate, respectively.

"**Amendment Date**" shall mean, subject to the satisfaction of the conditions set forth in Section 4.3, March 17, 2011.

"**Anti-Terrorism Laws**" shall have the meaning assigned to such term in Section 3.23.

"**Applicable Margin**" shall mean for any date of determination with respect to any Loan, 3.50%.

"**Approved Fund**" shall mean any person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or investing in bank and other commercial loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"**Approved Valuation**" shall mean any periodic valuation of the Inventory of the Loan Parties performed by Hilco Appraisal Services, LLC or such other unaffiliated valuation company selected by the Collateral Manager and acceptable to Borrower and the Collateral Agent, performed at Borrower's or Collateral Manager's request not more than once every six months (unless a Default or Event of Default is continuing, in which case the Collateral Manager may request valuations on a more frequent basis); it being understood such valuation shall (except as may be approved by the Collateral Manager) take into account the amount estimated by such valuation company for marshalling, reconditioning, carrying, and sales expenses designated to maximize the resale value of such Inventory and assuming that the time required to dispose of such Inventory is customary with respect to such Inventory.

"**Arranger**" shall have the meaning assigned to such term in the preamble hereto.

"**Asset Sale**" shall mean (a) any disposition of any property, by any Company and (b) any sale or other disposition of any Equity Interests in a Subsidiary by Borrower or any issuance, sale or other disposition of any Equity Interests by any Subsidiary (including any sale or other disposition of any Equity Interests in a Subsidiary by any such Subsidiary), in each case, to any person other than a Loan Party. Notwithstanding the foregoing, none of the following shall constitute "Asset Sales": (i) any disposition of assets permitted by Section 6.04(c)(ii), Section 6.05(a), Section 6.06(a), Section 6.06(d), Section 6.06(i) or Section 6.06(j), or (ii) solely for purposes of clause (a) above, (A) any trade-in of equipment in exchange for other equipment in the ordinary course of business; *provided* that in the good faith judgment of such Company it receives equipment having a Fair Market Value equal to or greater than the equipment being traded in; (B) the creation

of a Lien (but not the sale or other disposition of the property subject to such Lien), to the extent it is a Permitted Lien; (C) licensing or sublicensing of intellectual property of any Company in the ordinary course of business and otherwise in accordance with the applicable Security Documents; and (D) any other conveyance, sale, lease, sublease, assignment, transfer or other disposition (including by way of merger or consolidation and including any Sale and Leaseback Transaction) of any property, by any Company for Fair Market Value resulting in not more than $100,000 in Net Cash Proceeds per asset sale (or series of related asset sales) and not more than $500,000 in Net Cash Proceeds in any fiscal year.

"**Assigning Lender**" shall mean each Lender immediately prior to the Restatement Date that holds both a Revolving Commitment or a Revolving Commitment and Term Loans under the Existing Credit Agreement, other than HF-4.

"**Assignment and Acceptance**" shall mean an assignment and acceptance entered into by a Lender, as assignor, and an assignee, and accepted by the Administrative Agent, substantially in the form of Exhibit A, or such other form as shall be approved by the Administrative Agent from time to time.

"**Bailee Letter**" shall have the meaning assigned to such term in the Security Agreement.

"**Base Rate**" shall mean, for any day, the prime rate published in *The Wall Street Journal* for such day; *provided* that if *The Wall Street Journal* ceases to publish for any reason such rate of interest, "**Base Rate**" shall mean the prime lending rate as set forth on the Bloomberg page PRIMBB Index (or successor page) for such day (or such other service as determined by the Administrative Agent from time to time for purposes of providing quotations of prime lending interest rates); each change in the Base Rate shall be effective on the date such change is effective. The prime rate is not necessarily the lowest rate charged by any financial institution to its customers.

"**Board**" shall mean the Board of Governors of the Federal Reserve System of the United States.

"**Board of Directors**" shall mean, with respect to any person, (i) in the case of any corporation, the board of directors of such person, (ii) in the case of any limited liability company, the board of managers or board of directors, as applicable, of such person, or if such limited liability company does not have a board of managers or board of directors, the functional equivalent of the foregoing, (iii) in the case of any partnership, the board of directors or board of managers, as applicable, of the general partner of such person and (iv) in any other case, the functional equivalent of the foregoing.

"**Borrower**" shall have the meaning assigned to such term in the preamble hereto.

"**Borrower Account**" shall mean, initially account # _____ at Bank of America, N.A., ABA # _____, or, thereafter, such other bank account designated by Borrower by written notice to the Collateral Agent and the Collateral Manager from time to time.

"**Borrowing**" shall mean (a) a Revolving Loan, or (b) a Swingline Loan.

"**Borrowing Base**" shall mean, as of any date of determination, an amount equal to (i) 85% of the Expected Net Value of Eligible Receivables, *plus* (ii) (x) from the Restatement Date until the Valuation Delivery Date, 25%; *provided* if the Valuation Delivery Date has not occurred by January 11, 2011 due primarily to the lack of cooperation by Borrower, then 0%, or (y) all times after the Valuation Delivery Date, 50%, of the OLV of the Eligible Inventory, in each case and at all times as calculated by the Collateral Manager based upon the most recent Borrowing Base Certificate delivered to the Collateral Manager by Borrower as may be modified in accordance with this Agreement, *provided*, that prior to the occurrence of

the Valuation Date, the amount included in the Borrowing Base under this clause (ii) shall not exceed $12,000,000; *minus* (iii) Accrued Amounts, *minus* (iv) Borrowing Base Reserves. For the purposes of this defined term, "**Valuation Delivery Date**" shall mean the date of the delivery to the Collateral Manager of a reasonably acceptable updated Approved Valuation.

"**Borrowing Base Certificate**" shall mean a certificate signed by Borrower, substantially in the form of Exhibit B-2 hereto, which shall provide the most recently available information (including updated information) with respect to the Eligible Receivables and Eligible Inventory of the Loan Parties (segregated by the classes set forth in Annex III attached hereto) that is set forth in the general trial balance of each of the Loan Parties.

"**Borrowing Base Deficiency**" means, as of any date the positive difference, if any, between (x) the Revolving Exposure of all of the Lenders, *minus* (y) the Borrowing Base, determined with reference to the most recent Borrowing Base Certificate.

"**Borrowing Base Reserves**" shall mean (x) the reserves established as of the Restatement Date and set forth on Annex V hereto and (y) the Collateral Manager shall have the right to establish, modify or eliminate reserves against Eligible Receivables and Eligible Inventory from time to time in its Permitted Discretion. Borrowing Base Reserves will not be established (1) for any non-cash items, (2) for the loss of any contract including any Program Agreement, (3) to address matters otherwise adjusted under the Expected Net Value or OLV, or (4) as a result of the filing of any lawsuit by any person or the initiation of any investigation or inquiry by any Governmental Authority, or in either case the threat thereof, unless and until the Collateral Manager determines in good faith after consultation with Borrower that the basis of such lawsuit, investigation or inquiry is likely to result in a material setoff, recoupment or other reduction of collections under the Receivables. Without limiting the generality of the foregoing, reserves shall in all cases be taken with respect to the full amount of Federal tax Liens, whether or not Borrower has taken reserves with respect to such amounts on its books and records.

"**Borrowing Request**" shall mean a request by Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit B, or such other form as shall be approved by the Administrative Agent and Collateral Manager from time to time.

"**Business Day**" shall mean any day other than a Saturday, Sunday or other day on which banks in New York City are authorized or required by law to close; *provided, however*, that when used in connection with the determination of the LIBOR Rate, the term "Business Day" shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London interbank market.

"**Capital Expenditures**" shall mean, without duplication, for any period (a) any expenditure or commitment to expend money made during such period for any purchase or other acquisition of any asset including capitalized leasehold improvements, which would be classified as a fixed or capital asset on a consolidated balance sheet of Borrower and its Subsidiaries prepared in accordance with GAAP, and (b) Capital Lease Obligations incurred by such persons during such period with respect to real or personal property acquired during such period, or Synthetic Lease Obligations incurred by such persons during such period, but excluding expenditures made directly in connection with (i) the replacement, substitution or restoration of property by reason of (i) a Casualty Event, (ii) the Acquisition and (iii) any Permitted Acquisitions.

"**Capital Lease Obligations**" of any person shall mean the obligations of such person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital

leases on a balance sheet of such person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"**Capital Requirements**" shall mean, as to any person, any matter, directly or indirectly, (i) regarding capital adequacy, capital ratios, capital requirements, the calculation of such person's capital or similar matters, or (ii) affecting the amount of capital required to be obtained or maintained by such person or any person controlling such person (including any direct or indirect holding company), or the manner in which such person or any person controlling such person (including any direct or indirect holding company), allocates capital to any of its contingent liabilities (including letters of credit), advances, acceptances, commitments, assets or liabilities.

"**Cash Equivalents**" shall mean, as to any person, (a) marketable securities issued, or directly, unconditionally and fully guaranteed or insured, by the United States or any agency or instrumentality thereof (*provided* that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition by such person, (b) time deposits and certificates of deposit of any Lender or any commercial bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia having, capital and surplus aggregating in excess of $500,000,000 and a rating of "A" (or such other similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act) with maturities of not more than one year from the date of acquisition by such person, (c) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (a) above entered into with any person meeting the qualifications specified in clause (b) above, (d) commercial paper issued by any person incorporated in the United States having one of the two highest ratings obtainable from Standard & Poor's Rating Service or Moody's Investors Service Inc., in each case maturing not more than one year after the date of acquisition by such person, (e) investments in money market funds at least 95% of whose assets are comprised of securities of the types described in clauses (a) through (d) above, and (f) demand deposit accounts maintained in the ordinary course of business with any bank meeting the qualifications specified in clause (b) above.

"**Cash Interest Expense**" shall mean, for any period, Consolidated Interest Expense for such period, *less* the sum of (a) interest on any debt paid by the increase in the principal amount of such debt including by issuance of additional debt of such kind for such period, and (b) items described in clause (c) or, other than to the extent paid in cash, clause (g) of the definition of "Consolidated Interest Expense" for such period.

"**Casualty Event**" shall mean any loss of title or any loss of or damage to or destruction of, or any condemnation or other taking (including by any Governmental Authority) of, any property of any Company. "Casualty Event" shall include any taking of all or any part of any Real Property of any person or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any Legal Requirement, or by reason of the temporary requisition of the use or occupancy of all or any part of any Real Property of any person or any part thereof by any Governmental Authority, or any settlement in lieu thereof.

"**CERCLA**" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq*.

A "**Change of Control"** means an event or series of events by which: (a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have "beneficial

ownership" of all Equity Interests that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of 35% or more of the Equity Interests of Borrower entitled to vote for members of the Board of Directors of Borrower on a fully diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right); (b) during any period of 24 consecutive months, a majority of the members of the Board of Directors of Borrower cease to be composed of individuals (i) who were members of that Board of Directors on the first day of such period, (ii) whose election or nomination to that Board of Directors was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that Board of Directors or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that Board of Directors (excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that Board of Directors occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors); (c) any person or two or more persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of Borrower, or control over the Voting Stock of Borrower on a fully-diluted basis (and taking into account all such Voting Stock that such person or group has the right to acquire pursuant to any option right) representing 40% or more of the combined voting power of such Voting Stock; or (d) at any time a "Change of Control" (or other defined term having a similar purpose) as defined in the Senior Note Documents or in any document governing any refinancing of any of the Senior Notes occurs.

"**Change in Law**" shall mean (a) the adoption of any law, treaty, order, rule or regulation after the date of this Agreement, (b) any change in any law, treaty, order, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or Issuing Lender (or for purposes of Section 2.12(b), by any lending office of such Lender or by such Lender's or Issuing Lender's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

"**Charges**" shall have the meaning assigned to such term in Section 11.13.

"**Cisco Capital Lease**" shall mean the Master Agreement to Lease Equipment, dated as of January 15, 2010, between Borrower and Cisco Systems Capital Corporation, as it may be amended, supplemented, waived or otherwise modified from time to time in accordance with the terms hereof and thereof.

"**Claims**" shall have the meaning assigned to such term in Section 11.03(b).

"**Class**," when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans or Swingline Loans and, when used in reference to any Commitment, refers to whether such Commitment is a Revolving Commitment or Swingline Commitment.

"**Closing Date**" shall mean March 25, 2010, being the date of the initial Credit Extension under the Existing Credit Agreement.

"**CMS**" shall mean Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"**Collateral**" shall mean, collectively, all of the Security Agreement Collateral, the Mortgaged Property (if any) and all other property of whatever kind and nature, whether now existing or hereafter acquired, pledged as collateral under any Security Document.

"**Collateral Agent**" shall have the meaning assigned to such term in the preamble hereto.

"**Collateral Manager**" shall have the meaning assigned to such term in the preamble hereto.

"**Collateral Management Agreement**" shall mean the Amended and Restated Collateral Management Agreement, dated as of the Closing Date and amended and restated as of the Restatement Date, substantially in the form of Exhibit N among the Loan Parties, the Administrative Agent, the Collateral Manager and the Collateral Agent for the benefit of the Secured Parties, as the same may be supplemented from time to time by one or more Joinder Agreements (as defined therein), or otherwise.

"**Collection Account**" shall have the meaning provided in the Collateral Management Agreement

"**Collections**" shall mean all cash collections, wire transfers, electronic funds transfers and other cash proceeds of Receivables and Inventory, and all Net Cash Proceeds, deposited in or transferred to the Collection Account, including, without limitation, all cash proceeds thereof.

"**Commercial Letter of Credit**" shall mean any letter of credit issued for the purpose of providing credit support in connection with the purchase of materials, goods or services by Borrower or any of its Subsidiaries in the ordinary course of their businesses.

"**Commitment**" shall mean, with respect to any Lender, such Lender's Revolving Commitment or Swingline Commitment.

"**Commitment Letter**" shall mean the Commitment Letter, dated December 10, 2010 (together with the Arrangement and Fee Letter referred to therein), between Borrower and the Administrative Agent.

"**Communications**" shall have the meaning assigned to such term in Section 11.01(d).

"**Companies**" shall mean Borrower and its Subsidiaries; and "**Company**" shall mean any one of them.

"**Company Accreditation**" and "**Company Accreditations**" shall have the meanings assigned to such terms in Section 3.19(c).

"**Company Health Care Permit**" and "**Company Health Care Permits**" shall have the meanings assigned to such terms in Section 3.19(b).

"**Company Regulatory Filings**" shall have the meaning assigned to such term in Section 3.19(e).

"**Company Reimbursement Approval**" and "**Company Reimbursement Approvals**" shall have the meanings assigned to such terms in Section 3.19(d).

"**Compliance Certificate**" shall mean a certificate of a Financial Officer substantially in the form of Exhibit C.

"**Confidential Information Memorandum**" shall mean that certain confidential information memorandum dated February 2010.

"**Consolidated Amortization Expense**" shall mean, for any period, the amortization expense of Borrower and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

"**Consolidated Current Assets**" shall mean, as at any date of determination, the total assets of Borrower and its Subsidiaries (other than cash, cash equivalents and marketable securities) which may properly be classified as current assets on a consolidated balance sheet of Borrower and its Subsidiaries in accordance with GAAP.

"**Consolidated Current Liabilities**" shall mean, as at any date of determination, the total liabilities of Borrower and its Subsidiaries which may properly be classified as current liabilities (other than the current portion of any Loans or Senior Notes, if any) on a consolidated balance sheet of Borrower and its Subsidiaries in accordance with GAAP.

"**Consolidated Depreciation Expense**" shall mean, for any period, the depreciation expense of Borrower and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

"**Consolidated EBITDA**" shall mean, for any period, Consolidated Net Income for such period, adjusted by (x) *adding thereto*, without duplication, in each case (other than clause (e) below) only to the extent (and in the same proportion) deducted in determining such Consolidated Net Income (and with respect to the portion of Consolidated Net Income attributable to any Subsidiary of Borrower only if a corresponding amount would be permitted to be (A) distributed by operation of the terms of its Organizational Documents or any agreement (other than this Agreement and the Senior Note Agreement), instrument, Order or other Legal Requirement applicable to such Subsidiary or its equity holders or (B) to the extent such amount is not permitted to be distributed solely as a direct result of the insolvency of such Subsidiary, repaid to Borrower under the Intercompany Note):

(a) Consolidated Interest Expense for such period,

(b) Consolidated Amortization Expense for such period,

(c) Consolidated Depreciation Expense for such period,

(d) Consolidated Tax Expense for such period,

(e) all cash proceeds of business interruption insurance received by the Loan Parties during such period to the extent not already included in determining Consolidated Net Income,

(f) Consolidated Permitted Restructuring Costs for such period,

(g) Consolidated Permitted Severance Costs for such period,

(h) costs and expenses directly incurred in connection with the Transactions (not to exceed $12,000,000 in the aggregate for all periods) during such period,

(i) reasonable and customary one-time, non-recurring fees, expenses and costs relating to any Permitted Acquisition, Equity Issuance, Investment, Debt Issuance or repayment of

Indebtedness, or amendment or modification of any Material Agreement or any regulatory compliance matter, each to the extent permitted hereunder (whether or not consummated) and only to the extent permitted to be deducted in accordance with GAAP (and not added back) in calculating Consolidated Net Income not to exceed $2,000,000 in any twelve month period, in each case, reasonably satisfactory to the Administrative Agent;

(j) non-cash costs and expenses relating to any equity-based compensation or equity-based incentive plan of Borrower or any Subsidiary for such period, and

(k) the aggregate amount of all other non cash items reducing Consolidated Net Income (excluding any non cash charge that results in an accrual of a reserve for cash charges in any future period) for such period.

(y) *subtracting therefrom* the aggregate amount of all non-cash items increasing Consolidated Net Income (other than the accrual of revenue or recording of receivables in the ordinary course of business).

"**Consolidated Fixed Charge Coverage Ratio**" shall mean, for any Test Period, the ratio of (a) Consolidated EBITDA for such Test Period *minus* (i) the aggregate amount of Capital Expenditures (other than Capital Expenditures financed with the proceeds of one or more Equity Issuances) for such period, to the extent paid in cash, (ii) all cash payments in respect of income taxes made during such period (net of any cash refund in respect of income taxes actually received during such period) and (iii) all cash Dividends paid by Borrower during such period as permitted in Section 6.08; to (b) Consolidated Fixed Charges for such Test Period.

"**Consolidated Fixed Charges**" shall mean, for any period, the sum, without duplication, of

(a) Cash Interest Expense for such period; and

(b) the principal amount of all voluntary prepayments and scheduled amortization payments on all Indebtedness (including the principal component of all Capital Lease Obligations of Borrower and its Subsidiaries for such period (as determined on the first day of the respective period)).

"**Consolidated Interest Expense**" shall mean, for any period, the total consolidated interest expense of Borrower and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP *plus*, without duplication:

(a) imputed interest on Capital Lease Obligations of Borrower and its Subsidiaries for such period;

(b) commissions, discounts and other fees and charges owed by Borrower or any of its Subsidiaries with respect to letters of credit securing financial obligations, bankers' acceptance financing and receivables financings for such period;

(c) amortization of debt issuance costs, debt discount or premium and other financing fees and expenses incurred by Borrower or any of its Subsidiaries for such period;

(d) cash contributions to any employee stock ownership plan or similar trust made by Borrower or any of its Subsidiaries to the extent such contributions are used by such plan or trust

to pay interest or fees to any person (other than Borrower or a Wholly Owned Subsidiary) in connection with Indebtedness incurred by such plan or trust for such period;

(e) all interest paid or payable with respect to discontinued operations of Borrower or any of its Subsidiaries for such period;

(f) the interest portion of any deferred payment obligations of Borrower or any of its Subsidiaries for such period;

(g) all interest on any Indebtedness of Borrower or any of its Subsidiaries of the type described in clause (e) or (i) of the definition of "Indebtedness" for such period;

provided that (a) to the extent directly related to the Transactions, Debt Issuance costs, debt discount or premium and other financing fees and expenses shall be excluded from the calculation of Consolidated Interest Expense and (b) Consolidated Interest Expense shall be calculated after giving effect to Hedging Agreements (including associated costs) intended to protect against fluctuations in interest rates, but excluding unrealized gains and losses with respect to any such Hedging Agreements.

"**Consolidated Net Income**" shall mean, for any period, the consolidated net income (or loss) of Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP; *provided* that there shall be excluded from such net income (to the extent otherwise included therein), without duplication:

(a) the net income (or loss) of any person (other than a Subsidiary of Borrower) in which any person other than Borrower and its Subsidiaries has an ownership interest, except to the extent that cash in an amount equal to any such income has actually been received by Borrower or (subject to clause (b) below) any of its Subsidiaries during such period;

(b) the net income of any Subsidiary of Borrower during such period to the extent that (A) the declaration or payment of dividends or similar distributions by such Subsidiary of that income is not permitted by operation of the terms of its Organizational Documents or any agreement (other than this Agreement and the Senior Note Agreement), instrument, Order or other Legal Requirement applicable to that Subsidiary or its equity holders during such period, (B) such amount is not permitted to be distributed solely as a direct result of the insolvency of such Subsidiary, repaid to Borrower under the Intercompany Note, except that Borrower's equity in net loss of any such Subsidiary for such period shall be included in determining Consolidated Net Income or (C) such net income, if dividended or distributed to the equity holders of such Subsidiary in accordance with the terms of its Organizational Documents, would be received by any Person other than a Loan Party;

(c) any gain (or loss), together with any related provisions for taxes on any such gain (or the tax effect of any such loss), realized during such period by Borrower or any of its Subsidiaries upon any disposition of assets by Borrower or any of its Subsidiaries;

(d) gains and losses due solely to fluctuations in currency values and the related tax effects determined in accordance with GAAP for such period;

(e) non-cash gains and losses resulting from any reappraisal, revaluation, write-down or write-up of assets (including intangible assets, goodwill and deferred financing costs);

(f) unrealized gains and losses with respect to Hedging Obligations for such period; and

(g) any extraordinary (as determined in accordance with GAAP) or nonrecurring gain (or extraordinary or nonrecurring loss), together with any related provision for taxes on any such gain (or the tax effect of any such loss), recorded or recognized by Borrower or any of its Subsidiaries during such period.

For purposes of this definition of "Consolidated Net Income," "**nonrecurring**" means any non-cash gain or loss as of any date that (i) did not occur in the ordinary course of Borrower's or its Subsidiaries' business and (ii) is of a nature and type that has not occurred in the prior twelve month period and is not reasonably expected to occur in the future.

"**Consolidated Permitted Restructuring Costs**" shall mean, for itemized restructuring charges not exceeding $40,000,000 in the aggregate taken at any time or from time to time during the 2011 fiscal year of Borrower, in connection with the consummation of the Acquisition, those demonstrable cost-savings and one-time restructuring costs and related charges, expenses or reserves reasonably anticipated by Borrower as of any date of determination to be achieved or incurred, as the case may be, including any such costs related to retention, systems establishment, pension charges, contract terminations, lease obligations and costs to consolidate facilities and relocate employees or equipment and similar costs, expenses or reserves following the consummation thereof, which cost-savings and one-time restructuring costs, and related charges expenses or reserves shall (x) in each case, be estimated by Borrower on a good faith basis as of each date of determination prior to the inclusion of the applicable cost-savings and/or one-time restructuring costs, expenses or reserves in the calculation of Consolidated Permitted Restructuring Costs (which may include, without limitation, those permitted under Regulation S-X of the Exchange Act).

"**Consolidated Permitted Severance Costs**" shall mean, one-time severance expense of Borrower and its Subsidiaries incurred during the 2010 fiscal year of Borrower in an amount not to exceed $5,500,000 in the aggregate.

"**Consolidated Tax Expense**" shall mean, for any period, the tax expense of Borrower and its Subsidiaries, for such period, determined on a consolidated basis in accordance with GAAP.

"**Contingent Obligation**" shall mean, as to any person, any obligation, agreement, understanding or arrangement of such person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations ("**primary obligations**") of any other person (the "**primary obligor**") in any manner, whether directly or indirectly, including any obligation of such person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor; (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; (d) with respect to bankers' acceptances, letters of credit and similar credit arrangements, until a reimbursement obligation arises (which reimbursement obligation shall constitute Indebtedness); or (e) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; *provided*, *however*, that the term "Contingent Obligation" shall not include endorsements of instruments for deposit or collection in the ordinary course of business or any product warranties given in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made

(or, if less, the maximum amount of such primary obligation for which such person may be liable, whether singly or jointly, pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such person is required to perform thereunder) as determined by such person in good faith.

"**Contribution Share**" shall have the meaning assigned to such term in Section 7.10.

"**Control**" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract or otherwise, and the terms "**Controlling**" and "**Controlled**" shall have meanings correlative thereto.

"**Control Agreement**" shall have the meaning assigned to such term in the Security Agreement.

"**Credit and Collection Policy**" shall have the meaning provided in the Collateral Management Agreement.

"**Credit Extension**" shall mean, as the context may require, (i) the making of a Loan by a Lender or (ii) the issuance of any Letter of Credit, or the amendment, extension or renewal of any existing Letter of Credit, by an Issuing Lender.

"**Debt Issuance**" shall mean the incurrence by any Company of any Indebtedness after the Closing Date (other than as permitted by Section 6.01).

"**Default**" shall mean any event, occurrence or condition which is, or upon notice, lapse of time or both would constitute, an Event of Default.

"**Default Period**" shall have the meaning assigned to such term in Section 2.16(c).

"**Default Rate**" shall have the meaning assigned to such term in Section 2.06(b).

"**Defaulted Receivable**" shall mean a Receivable (i) as to which the Obligor thereof or any other person obligated thereon has taken any action, or suffered any event to occur, of the type described in paragraph (g) or (h) of Section 8.01 (assuming for the purposes of this clause (i) that such Obligor or other person, as applicable, was a Loan Party), or (ii) which, consistent with the Credit and Collection Policy, would be written off on the applicable Loan Party's books as uncollectible.

"**Defaulting Lender**" shall mean any Lender, as reasonably determined by the Administrative Agent, that has (a) failed to fund its portion of any Borrowing, or any portion of its participation in any Letter of Credit or Swingline Loan, within three Business Days of the date on which it shall have been required to fund the same, unless the subject of a good faith dispute between Borrower and such Lender related hereto, (b) notified Borrower, the Administrative Agent, any Issuing Lender, the Swingline Lender or any other Lender in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or under agreements in which it commits to extend credit generally, (c) failed, within three Business Days after written request by the Administrative Agent or Borrower, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans (unless the subject of a good faith dispute between Borrower and such Lender) and participations in then outstanding Letters of Credit and Swingline Loans; provided that any such Lender shall cease to be a Defaulting Lender under this clause (c) upon receipt of such confirmation by the Administrative Agent or Borrower, (d) otherwise failed to pay over to Borrower, the Administrative Agent or any other Lender any other amount required to

be paid by it hereunder within three Business Days of the date when due (unless the subject of a good faith dispute), or (e) (i) been (or has a parent company that has been) adjudicated as, or determined by any Governmental Authority having regulatory authority over such person or its properties or assets to be, insolvent or (ii) become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar person charged with reorganization or liquidation of its business or custodian, appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar person charged with reorganization or liquidation of its business or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment, unless in the case of any Lender referred to in this clause (e) Borrower, the Administrative Agent, the Swingline Lender and each Issuing Lender shall be satisfied that such Lender intends, and has all approvals required to enable it, to continue to perform its obligations as a Lender hereunder. For the avoidance of doubt, a Lender shall not be deemed to be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in such Lender or its parent by a Governmental Authority.

"**Delinquent Receivable**" shall mean a Receivable (a) that has not been paid in full on or following the 180th day following the date of original invoicing thereof, or (b) that is a Denied Receivable.

"**Denied Receivable**" shall mean any Receivable as to which any related representations or warranties have been discovered at any time to have been breached.

"**Depositary Agreement**" shall have the meaning assigned to such term in the Collateral Management Agreement.

"**Determination Date**" shall mean, for any Month, the date two Business Days immediately prior to the first day of such Month.

"**disposition**" shall mean, with respect to any property, any conveyance, sale, lease, sublease, assignment, transfer or other disposition (including by way of merger or consolidation and including any Sale and Leaseback Transaction) of such property.

"**Disqualified Capital Stock**" shall mean any Equity Interest which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the first anniversary of the Scheduled Maturity Date, (b) is convertible into or exchangeable or exercisable (unless at the sole option of the issuer thereof) for (i) debt securities or other indebtedness or (ii) any Equity Interests referred to in (a) above, in each case at any time on or prior to the first anniversary of the Scheduled Maturity Date, or (c) contains any repurchase or payment obligation which may come into effect prior to the first anniversary of the Scheduled Maturity Date.

"**Dividend**" shall mean, with respect to any person, that such person has declared or paid a dividend or returned any equity capital to the holders of its Equity Interests or authorized or made any other distribution, payment or delivery of property (other than Qualified Capital Stock of such person) or cash to the holders of its Equity Interests as such, or redeemed, retired, purchased or otherwise acquired, directly or indirectly, for consideration any of its Equity Interests outstanding (or any options or warrants issued by such person with respect to its Equity Interests), or set aside any funds for any of the foregoing purposes, or shall have

permitted any of its Subsidiaries to purchase or otherwise acquire for consideration any of the Equity Interests of such person outstanding (or any options or warrants issued by such person with respect to its Equity Interests). Without limiting the foregoing, "**Dividends**" with respect to any person shall also include all payments made or required to be made by such person with respect to any stock appreciation rights, plans, equity incentive or achievement plans or any similar plans or setting aside of any funds for the foregoing purposes.

"**Documentation Agent**" shall have the meaning assigned to such term in Section 10.08.

"**Dollar Equivalent**" shall mean, as to any amount denominated in a Judgment Currency as of any date of determination, the amount of Dollars that would be required to purchase the amount of such Judgment Currency based upon the spot selling rate at which Bank of America, N.A. (or another financial institution designated by the Administrative Agent from time to time) offers to sell such Judgment Currency for Dollars in the London foreign exchange market at approximately 11:00 a.m. London time on such date for delivery two Business Days later.

"**Dollars**" or "**$**" shall mean lawful money of the United States.

"**Domestic Subsidiary**" shall mean any Subsidiary other than a Foreign Subsidiary.

"**Early Termination Fee**" shall mean 1.00% of the Revolving Commitment being reduced or terminated hereunder.

"**Eligibility Criteria**" shall mean the criteria and basis for determining whether a Receivable qualifies as an Eligible Receivable or Inventory qualifies as Eligible Inventory, all as set forth in Annex IV hereto, as such Eligibility Criteria may be modified, subject to compliance with Section 11.02, from on the recommendation of the Collateral Manager based solely on historical performance and other Loan Party-related or Obligor-related factually-based credit criteria upon notice from the Collateral Manager to Borrower (with a copy to the Administrative Agent).

"**Eligible Inventory**" shall mean Inventory that satisfy the Eligibility Criteria for Inventory.

"**Eligible Receivables**" shall mean Receivables that satisfy the Eligibility Criteria for Receivables.

"**Embargoed Person**" shall have the meaning assigned to such term in Section 6.20.

"**Employee Benefit Plan**" shall mean any "employee benefit plan" as defined in Section 3(3) of ERISA which is or was maintained or contributed to by any Company or any of their respective ERISA Affiliates.

"**Environment**" shall mean any surface or subsurface physical medium or natural resource, including air, land, soil, surface waters, ground waters, stream and river sediments, biota and any indoor area, surface or physical medium.

"**Environmental Claim**" shall mean any claim, notice, demand, Order, action, suit, proceeding, or other communication alleging or asserting liability or obligations under Environmental Law, including liability or obligation for investigation, remediation, removal, cleanup, response, corrective action, damages to natural resources, personal injury, property damage, fines, penalties or other costs resulting from, related to or arising out of (i) the presence, Release or threatened Release of Hazardous Material in, on, into or from the Environment at any location or (ii) any violation of or non-compliance with Environmental Law, and

shall include any claim, notice, demand, Order, action, suit or proceeding seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from, related to or arising out of the presence, Release or threatened Release of Hazardous Material or alleged injury or threat of injury to health, safety or the Environment.

"**Environmental Law**" shall mean any and all applicable current and future Legal Requirements relating to health, safety or the Environment, the Release or threatened Release of Hazardous Material, natural resources or natural resource damages, or occupational safety or health.

"**Environmental Permit**" shall mean any permit, license, approval, consent, registration or other authorization required by or from a Governmental Authority under any Environmental Law.

"**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, whether outstanding on the date hereof or issued on or after the Closing Date, but excluding debt securities convertible or exchangeable into such equity.

"**Equity Issuance**" shall mean, without duplication, (i) any issuance or sale by Borrower after the Closing Date of any of its Equity Interests (including any Equity Interests issued upon exercise of any warrant or option) or any warrants or options to purchase its Equity Interests or (ii) any contribution to the capital of Borrower; *provided*, *however*, that an Equity Issuance shall not include (x) any Preferred Stock Issuance or Debt Issuance, (y) any issuance of Equity Interests made pursuant to the Acquisition Agreement, and (z) any such sale or issuance by Borrower of not more than an aggregate amount of 10% of its Equity Interests (including its Equity Interests issued upon exercise of any warrant or option or warrants or options to purchase its Equity Interests but excluding Disqualified Capital Stock), in each case, to directors officers or employees of any Company.

"**ERISA**" shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

"**ERISA Affiliate**" shall mean, with respect to any person, any trade or business (whether or not incorporated) that, together with such person, is treated as a single employer under Section 414(b) or (c) of the Code, or solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code. Any former ERISA Affiliate of a person or any of its Subsidiaries shall continue to be considered an ERISA Affiliate of such person or such Subsidiary within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of such person or such Subsidiary and with respect to liabilities arising after such period for which such person or such Subsidiary could reasonably be expected to be liable under the Code or ERISA, but in no event for more than six years after such period if no such liability has been asserted against such person or such Subsidiary; *provided*, *however*, that such person or such Subsidiary shall continue to be an ERISA Affiliate of such person or such Subsidiary after the expiration of the six-year period solely with respect to any liability asserted against such person or such Subsidiary prior to the expiration of such six-year period.

"**ERISA Event**" shall mean (i) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan; (ii) the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(d) of the Code) or the failure to make by its due date a required installment of

a material amount under Section 412(m) of the Code with respect to any Pension Plan or the failure to make any required contribution of a material amount to a Multiemployer Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by any Company or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which could reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (vi) the imposition of liability of a material amount on any Company or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of any Company or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability of a material amount therefor, or the receipt by any Company or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan, or the assets thereof, or against any Company or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (ix) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Code) to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Code; (x) the imposition of a Lien pursuant to Section 401(a)(29) or 412(n) of the Code or pursuant to ERISA with respect to any Pension Plan; or (xi) the occurrence of a non-exempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could reasonably be expected to result in liability of a material amount to any Company or any of their respective ERISA Affiliates.

"**Eurodollar Unavailability Period**" shall mean any period of time during which a notice delivered to Borrower in accordance with Section 2.11 or Section 2.12(e) shall remain in effect.

"**Event of Default**" shall have the meaning assigned to such term in Section 8.01.

"**Excess Payment**" shall have the meaning assigned to such term in Section 7.10.

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended.

"**Exchange Senior Notes**" shall mean senior notes issued in exchange for Senior Notes pursuant to the Senior Note Agreement, which Exchange Senior Notes are substantially identical securities to the originally issued Senior Notes and shall be issued pursuant to a registered exchange offer or private exchange offer for the Senior Notes; *provided* that in no event will the issuance of any Exchange Senior Notes increase the aggregate principal amount of Senior Notes theretofore outstanding or otherwise result in an increase in the interest rate applicable to the Senior Notes theretofore outstanding.

"**Excluded Taxes**" shall mean, with respect to the Administrative Agent, any Lender, the Issuing Lender or any other recipient of any payment to be made by or on account of any obligation of Borrower hereunder, (a) income or franchise taxes imposed on (or measured by) its net income by the United States, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located and (b) in the case of a Foreign Lender (other than an assignee pursuant to a request by Borrower under Section 2.16), any

withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 2.15(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from Borrower with respect to such withholding tax pursuant to Section 2.15(a) (it being understood and agreed, for the avoidance of doubt, that any withholding tax imposed on a Foreign Lender as a result of a Change in Law or regulation or interpretation thereof occurring after the time such Foreign Lender became a party to this Agreement shall not be an Excluded Tax).

"**Executive Order**" shall have the meaning assigned to such term in Section 3.23.

"**Executive Orders**" shall have the meaning assigned to such term in Section 6.20.

"**Existing Credit Agreement**" shall have the meaning assigned to such term in the recitals hereto.

"**Existing A&R Credit Agreement Obligations**" shall have the meaning assigned to such term in Section 11.22(b).

"**Existing Credit Agreement Obligations**" shall have the meaning assigned to such term in Section 11.22(a).

"**Expected Net Value**" shall mean, with respect to any Eligible Receivable, the gross unpaid amount of such Receivable on the date of creation thereof, times the Net Value Factor.

"**Fair Market Value**" shall mean, with respect to any asset (including any Equity Interests of any person), the price at which a willing buyer, not an Affiliate of the seller, and a willing seller who does not have to sell, would agree to purchase and sell such asset, as determined in good faith by the Board of Directors of Borrower or, pursuant to a specific delegation of authority by such Board of Directors or a designated senior executive officer, of Borrower, or the Subsidiary of Borrower selling such asset.

"**Federal Funds Effective Rate**" shall mean, for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System of the United States arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary to the next 1/100th of 1%) of the quotations for the day for such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it.

"**Fee Letter**" shall mean the confidential Fee Letter, dated the Restatement Date, between Borrower and the Administrative Agent.

"**Fees**" shall mean the Non-Utilization Fees, the Early Termination Fees, the Administrative Agent Fees, the LC Participation Fees, the Fronting Fees and the other fees referred to in Section 2.05.

"**Financial Officer**" of any person shall mean any of the chief financial officer, the vice president - finance, principal accounting officer, treasurer or controller of such person.

"**FIRREA**" shall mean the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

"**First A&R Credit Agreement**" shall have the meaning assigned to such term in the recitals hereto.

"**Foreign Lender**" shall mean any Lender that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"**Foreign Subsidiary**" shall mean a Subsidiary that is organized under the laws of a jurisdiction other than the United States or any state thereof or the District of Columbia.

"**Fronting Fee**" shall have the meaning assigned to such term in Section 2.05(d).

"Funding Default" shall have the meaning assigned to such term in Section 2.16(c).

"**GAAP**" shall mean generally accepted accounting principles in the United States applied on a consistent basis.

"**Governmental Authority**" shall mean any federal, state, local or foreign (whether civil, administrative, criminal, military or otherwise) court, central bank or governmental agency, tribunal, authority, instrumentality, intermediary, carrier or regulatory body or any subdivision thereof or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"**Governmental Real Property Disclosure Requirements**" shall mean any Legal Requirement of any Governmental Authority requiring notification of the buyer, lessee, mortgagee, assignee or other transferee of any Real Property, facility, establishment or business, or any notification, registration or filing to or with any Governmental Authority, in connection with the sale, lease, mortgage, assignment or other transfer (including any transfer of control) of any Real Property, facility, establishment or business, as may be required under any applicable Environmental Law or of any actual or threatened presence or Release in or into the Environment, or the use, disposal or handling of Hazardous Material on, at, under or near the Real Property, facility, establishment or business to be sold, acquired, leased, mortgaged, assigned or transferred.

"**Granting Lender**" shall have the meaning assigned to such term in Section 11.04(h).

"**Guaranteed Obligations**" shall have the meaning assigned to such term in Section 7.01.

"**Guarantees**" shall mean the guarantees issued pursuant to Article VII by each of the Subsidiary Guarantors.

"**Hazardous Materials**" shall mean hazardous substances, hazardous wastes, hazardous materials, polychlorinated biphenyls ("**PCBs**") or any substance or compound containing PCBs, asbestos or any asbestos-containing materials in any form or condition, lead-based paint, urea, formaldehyde, pesticides, radon or any other radioactive materials including any source, special nuclear or by-product material, petroleum, petroleum products, petroleum-derived substances, crude oil or any fraction thereof, or any other pollutants, contaminants, chemicals, wastes, materials, compounds, constituents or substances, defined under, subject to regulation under, or which can give rise to liability or obligations under, any Environmental Laws.

"**Health Care Audits**" shall have the meaning assigned to such term in Section 3.19(f).

"**Health Care Laws**" shall have the meaning assigned to such term in Section 3.19(g).

"**Health Care Permits**" shall mean, collectively, all licenses, leases, powers, Permits, franchises, certificates, authorizations, approvals, consents, variances, exemptions, certificates of need, certifications, Orders and other rights necessary for and relating to the provision of health care services provided by the Companies.

"**Hedging Agreement**" shall mean (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, currency swap transactions, cross-currency rate swap transactions, currency options, cap transactions, floor transactions, collar transactions, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options or warrants to enter into any of the foregoing), whether or not any such transaction is governed by, or otherwise subject to, any master agreement or any netting agreement, and (b) any and all transactions or arrangements of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement (or similar documentation) published from time to time by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such agreement or documentation, together with any related schedules, a "**Master Agreement**"), including any such obligations or liabilities under any Master Agreement.

"**Hedging Obligations**" shall mean obligations under or with respect to Hedging Agreements.

"**HF-4**" shall have the meaning assigned to such term in the preamble hereto.

"**Indebtedness**" of any person shall mean, without duplication, (a) all obligations of such person for borrowed money or advances; (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments; (c) all obligations of such person under conditional sale or other title retention agreements relating to property purchased by such person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (d) all obligations of such person issued or assumed as part of the deferred purchase price of property or services (excluding trade accounts payable and accrued obligations incurred in the ordinary course of business on normal trade terms and not overdue by more than 90 days); (e) all Indebtedness of others secured by any Lien on property owned or acquired by such person, whether or not the obligations secured thereby have been assumed, but limited to the lower of (i) the Fair Market Value of such property and (ii) the amount of the Indebtedness secured; (f) all Capital Lease Obligations, Purchase Money Obligations and Off-Balance Sheet Obligations of such person; (g) all Hedging Obligations to the extent required to be reflected on a balance sheet of such person; (h) all obligations of such person for the reimbursement of any obligor in respect of letters of credit, letters of guaranty, bankers' acceptances and similar credit transactions; and (i) all Contingent Obligations of such person in respect of Indebtedness or obligations of others of the kinds referred to in clauses (a) through (h) above. 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 (other than in the case of general partner liability) to the extent that terms of such Indebtedness expressly provide that such person is not liable therefor.

"**Indemnified Taxes**" shall mean Taxes other than Excluded Taxes.

"**Indemnitee**" shall have the meaning assigned to such term in Section 11.03(b).

"**Information**" shall have the meaning assigned to such term in Section 11.12.

"**Insurance Policies**" shall mean the insurance policies and coverages required to be maintained by each Loan Party that is an owner or lessee of Mortgaged Property with respect to the applicable Mortgaged Property pursuant to Section 5.04 and all renewals and extensions thereof.

"**Insurance Requirements**" shall mean, collectively, all provisions of the Insurance Policies, all requirements of the issuer of any of the Insurance Policies and all Orders, rules, regulations and any other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) binding upon any Loan Party that is an owner of Mortgaged Property and applicable to the Mortgaged Property or any use or condition thereof.

"**Intellectual Property**" shall have the meaning assigned to such term in Section 3.06(a).

"**Intercompany Note**" shall mean a promissory note substantially in the form of Exhibit D.

"**Interest Payment Date**" shall mean (i) the first Business Day of each Month, and (ii) the Maturity Date or such earlier date on which the Revolving Commitments are terminated.

"**Inventory**" shall have the meaning assigned to such term in the Security Agreement.

"**Investments**" shall have the meaning assigned to such term in Section 6.04.

"**ISP**" shall mean, with respect to any Letter of Credit, the 'International Standby Practices 1998' (or 'ISP 98') published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance of such Letter of Credit).

"**Issuing Lender**" shall mean, as the context may require, (a) WFCF (and any Underlying Issuer or any other bank or lender) designated to act on its behalf with the consent of Borrower and the Administrative Agent, such consent not unreasonably withheld), with respect to Letters of Credit issued by it (or such designated bank), (b) any other Lender or Underlying Issuer that issues a Letter of Credit from time to time pursuant to Section 2.18(k) and Section 2.18(l) with respect to Letters of Credit issued by such Lender, or (c) collectively, all of the foregoing; *provided*, that all references to "Issuing Lender" in connection with the foregoing the delivery of notices, issuance of waivers, consents and similar terms hereunder shall mean solely Wells Fargo Capital Finance, LLC in such capacity.

"**Joinder Agreement**" shall mean a joinder agreement substantially in the form of Exhibit 3 to the Security Agreement.

"**Judgment Currency**" shall have the meaning assigned to such term in Section 11.18.

"**Judgment Currency Conversion Date**" shall have the meaning assigned to such term in Section 11.18.

"**Key Locations**" shall mean: (i) those locations of the Companies constituting, or containing, assets having a Fair Market Value greater than $2,500,000 on the Closing Date, and designated as such on Schedule 3.05(b) and (ii) such locations of the Companies constituting, or containing, assets having a Fair Market Value greater than $2,500,000 at any time subsequent to the Closing Date, including any Mortgaged Property described in Section 5.11(d).

"**Landlord Access Agreement**" shall mean a Landlord Access Agreement, substantially in the form of Exhibit F, or such other form as may reasonably be acceptable to the Administrative Agent.

"**Last Service Date**" shall mean, with respect to any Receivable that is not a Rebate Receivable, the earlier of (i) the date on which the applicable Loan Party has received the data required to bill such Receivable and (ii) the last day for submission of the related claim under any related contracts.

"**LC Commitment**" shall mean the commitment of the Administrative Agent to issue (or to arrange for the issuance of by a Lender designated by the Administrative Agent) Letters of Credit pursuant to Section 2.18. The amount of the LC Commitment shall be $5,000,000, but in no event shall the LC Commitment exceed the Revolving Commitment.

"**LC Disbursement**" shall mean a payment or disbursement made by the Issuing Lender or Underlying Issuer pursuant to a Letter of Credit.

"**LC Exposure**" shall mean at any time the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time *plus* (b) the aggregate principal amount of all Reimbursement Obligations outstanding at such time. The LC Exposure of any Revolving Lender at any time shall mean its Pro Rata Percentage of the aggregate LC Exposure at such time. For all purposes of this Agreement and the other Loan Documents, if, on any date of determination, a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP (or any other equivalent applicable rule with respect to force majeure events), such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn thereunder.

"**LC Participation Fee**" shall have the meaning assigned to such term in Section 2.05(d).

"**LC Request**" shall mean a request by Borrower in accordance with the terms of Section 2.18(b) and substantially in the form of Exhibit G, or such other form as shall be approved by the Issuing Lender.

"**LC Sub-Account**" shall have the meaning assigned to such term in Section 9.01(c).

"**Leases**" shall mean any and all leases, subleases, tenancies, options, concession agreements, rental agreements, occupancy agreements, franchise agreements, access agreements and any other agreements (including all amendments, extensions, replacements, renewals, modifications and/or guarantees thereof), whether or not of record and whether now in existence or hereafter entered into, affecting the use or occupancy of all or any portion of any Real Property.

"**Legal Requirements**" shall mean, as to any person, the Organizational Documents of such person, and any treaty, law (including the common law), statute, ordinance, code, rule, regulation, policies and procedures, Order or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such person or any of its property or to which such person or any of its property is subject.

"**Lenders**" shall mean (a) the financial institutions and other persons party hereto as "Lenders" on the Amendment Date, and (b) each financial institutions or other person that becomes a party hereto pursuant to an Assignment and Acceptance, other than, in each case, any such financial institution or person that has ceased to be a party hereto pursuant to an Assignment and Acceptance. Unless the context clearly indicates otherwise, the term "Lenders" shall include the Swingline Lender, each Issuing Lender.

"**Letter of Credit**" shall mean any Standby or Commercial Letter of Credit, in each case, issued or to be issued by an Issuing Lender (or by an Underlying Issuer as caused by the Issuing Lender) for the account of Borrower or one of its Subsidiaries pursuant to Section 2.18.

"**Letter of Credit Expiration Date**" shall mean the date which is ten (10) Business Days prior to the Scheduled Maturity Date.

"**LIBOR Rate**" shall mean, as for any Month, the rate per annum equal to the arithmetic mean (rounded to the nearest 1/100th of 1%) of the offered rates for deposits in Dollars with a term of three Months that appears on Reuters Screen LIBOR01 (or such other page as may replace such page on such service for the purpose of displaying the rates at which Dollar deposits are offered by leading banks in the London interbank deposit market as designated by the Administrative Agent from time to time) at approximately 11:00 a.m. on the Determination Date for such Month; *provided*, *however*, that (i) if no comparable term is available, the LIBOR Rate shall be determined using the weighted average of the offered rates for the two terms most nearly corresponding to such term, and (ii) if Reuters Screen LIBOR01 shall at any time no longer exist, "LIBOR Rate" shall mean the rate per annum equal to the rate at which the Administrative Agent is offered deposits in Dollars at approximately 11:00 a.m., London, England time, on the Determination Date in the London interbank market for delivery on the first day of such Month for a period of 90 days; *provided* that during any Eurodollar Unavailability Period, the "LIBOR Rate" shall be deemed to equal the Alternative Base Rate. "**Reuters Screen LIBOR01**" shall mean the display designated on the Reuters 3000 Xtra Page (or such other page as may replace such page on such service for the purpose of displaying the rates at which Dollar deposits are offered by leading banks in the London interbank deposit market).

"**Lien**" shall mean, with respect to any property, (a) any mortgage, deed of trust, lien, pledge, encumbrance, claim, charge, assignment, hypothecation, security interest or encumbrance of any kind or any filing of any financing statement under the UCC or any other similar notice of Lien under any similar notice or recording statute of any Governmental Authority, including any easement, right-of-way or other encumbrance on title to Real Property, in each of the foregoing cases whether voluntary or imposed by law, and any agreement to give any of the foregoing, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such property, and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"**Loan Documents**" shall mean this Agreement, the Letters of Credit, the Notes (if any), the Security Documents, the Restatement Documents, each Joinder Agreement, each Hedging Obligation relating to the Loans entered into with any counterparty that was a Lender or an Affiliate of a Lender at the time such Hedging Obligation was entered into and, solely for purposes of Section 8.01(e), the Fee Letter. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

"**Loan Parties**" shall mean Borrower and the Subsidiary Guarantors.

"**Loan**" or "**Loans**" shall mean, as the context may require, a Revolving Loan, a Term Loan or a Swingline Loan.

"**Lockbox**" shall have the meaning provided in the Collateral Management Agreement.

"**Lockbox Account**" shall have the meaning provided in the Collateral Management Agreement.

"**Lockbox Banks**" shall have the meaning provided in the Collateral Management Agreement.

"**Margin Stock**" shall have the meaning assigned to such term in Regulation U.

"**Material Adverse Effect**" shall mean (a) a material adverse effect on (i) the Acquisition, any of the other Transactions or the Restatement Transactions, or (ii) the condition (financial or otherwise), results of operations, assets, liabilities (contingent or otherwise), material agreements, properties, solvency, business, management or value of the Companies, taken as a whole, or the Loan Parties, taken as a whole, (b) a material impairment of the ability of the Loan Parties, taken as a whole, to fully and timely perform any of their obligations under any Loan Document, (c) a material impairment of the rights of or benefits or remedies available to the Lenders, the Issuing Lender or any Agent under any Loan Document, or (d) a material adverse effect on the Collateral or the Liens in favor of the Collateral Agent (for its benefit and for the benefit of the other Secured Parties) on the Collateral or the validity, enforceability, perfection or priority of such Liens. Without limiting the foregoing (A) the (i) loss of a previously held Health Care Permit material to the operation of the Companies' business as a result of action taken by any Governmental Authority to revoke, withdraw or suspend such Health Care Permit, or (ii) exclusion from continuing participation in any Program of which any Company is a participant which is material to the operation of the Companies' business as a result of action taken by any Governmental Authority to revoke, withdraw or suspend participation in such Program, shall be considered a Material Adverse Effect, and (B) the taking by Borrower of Consolidated Permitted Restructuring Costs and Consolidated Permitted Severance Costs in and of itself shall not be considered a Material Adverse Effect.

"**Material Agreement**" shall mean any agreement, contract or instrument to which any Company is a party or by which any Company or any of its properties is bound (excluding this Agreement or any other Loan Document) (i) pursuant to which any Company is required to make payments or other consideration, or will receive payments or other consideration, in excess of $1,000,000 in any fiscal year, (ii) governing, creating, evidencing or relating to Indebtedness of any Company in excess of $1,000,000, or (iii) the termination or suspension of which, without its prompt replacement, or the failure of any party thereto to perform its material obligations thereunder, without prompt cure, in each case, could reasonably be expected to have a Material Adverse Effect.

"**Maturity Date**" shall mean the earlier to occur of (i) the Scheduled Maturity Date, and (ii) the occurrence of an Event of Default (unless such event is waived in writing by the Required Lenders or 100% of the Revolving Lenders, as applicable).

"**Maximum Rate**" shall have the meaning assigned to such term in Section 11.13.

"**Medicaid**" shall mean collectively, the healthcare assistance program established by Title XIX of the Social Security Act (42 U.S.C. Sections 1396 et seq.) and any statutes succeeding thereto, and all Legal Requirements, rules, regulations, manuals, policies, procedures, orders, guidelines or requirements pertaining to such program including (a) all federal statutes (whether set forth in Title XIX of the Social Security Act or elsewhere) affecting such program, (b) all state statutes, regulations and plans for medical assistance enacted in connection with such program and federal rules and regulations promulgated in connection with such program, and (c) all applicable provisions of all rules, regulations, manuals, policies, procedures, orders and administrative or reimbursement guidelines and requirements of all Governmental Authorities promulgated in connection with such program (whether or not having the force of law).

"**Medicaid Provider Agreement**" shall mean an agreement, contract or instrument entered into between a health care facility, home health agency, hospice, rehabilitation facility or clinic (or equivalent), pharmacy, clinical laboratory, durable medical equipment supplier, orthotics and/or prosthetics supplier, respiratory therapy provider, wholesaler, physician, practitioner or other health care provider or supplier and CMS or any federal or state agency or other entity administering Medicaid in such state, or any other grant of authority by CMS or any federal or state agency or other entity administering Medicaid in such state,

under which such health care facility, home health agency, hospice, rehabilitation facility or clinic (or equivalent), pharmacy, clinical laboratory, durable medical equipment supplier, orthotics and/or prosthetics supplier, respiratory therapy provider, wholesaler, physician, practitioner or other health care provider or supplier is authorized to provide medical goods (including prescriptions) and services to Medicaid recipients and to be reimbursed by Medicaid for such goods and services.

"**Medicare**" shall mean, collectively, the health insurance program for the aged and disabled established by Title XVIII of the Social Security Act (42 U.S.C. Sections 1395 et seq.) and any statutes succeeding thereto, and all Legal Requirements, rules, regulations, manuals, policies, procedures, orders or guidelines pertaining to such program including (a) all federal statutes (whether set forth in Title XVIII of the Social Security Act or elsewhere) affecting such program, and (b) all applicable provisions of all rules, regulations, manuals, policies, procedures, orders and administrative or reimbursement guidelines and requirements of all Governmental Authorities promulgated in connection with such program (whether or not having the force of law), in each case as the same may be amended, restated, supplemented or otherwise modified from time to time.

"**Medicare Provider Agreement**" shall mean an agreement, contract or instrument entered into between a health care facility, home health agency, hospice, rehabilitation facility or clinic (or equivalent), pharmacy, clinical laboratory, durable medical equipment supplier, orthotics and/or prosthetics supplier, respiratory therapy provider, wholesaler, physician, practitioner or other health care provider or supplier and CMS or any federal agency or other entity administering Medicare, or any other grant of authority by CMS or any federal agency or other entity administering Medicare, under which such health care facility, home health agency, hospice, rehabilitation facility or clinic (or equivalent), pharmacy, clinical laboratory, durable medical equipment supplier, orthotics and/or prosthetics supplier, respiratory therapy provider, wholesaler, physician, practitioner or other health care provider or supplier is authorized to provide medical goods (including prescriptions) and services to Medicare patients and to be reimbursed by Medicare for such goods and services.

"**Merger Sub"** shall have the meaning given to such term in the recitals hereto.

"**Minimum Revolving Balance"** shall mean $30,000,000.

"**Misdirected Payment**" shall mean any form of payment in respect of a Receivable made by an Obligor in a manner other than as provided in the Notice to Obligors sent to such Obligor.

"**Month**" shall mean a calendar month.

"**Mortgage**" shall mean an agreement, including a mortgage, deed of trust or any other document, creating and evidencing a first priority Lien (subject to Permitted Liens) in favor of the Collateral Agent on Mortgaged Property in a form reasonably satisfactory to the Collateral Agent (including with respect to requirements for title, flood and other insurance and surveys), with such schedules and including such provisions as shall be necessary to conform such document to applicable local or foreign law or as shall be customary under applicable local or foreign Legal Requirements.

"**Mortgaged Property**" shall mean each Real Property, if any, which shall be subject to a Mortgage delivered after the Closing Date pursuant to Section 5.11(d).

"**Multiemployer Plan**" shall mean a multiemployer plan within the meaning of Section 4001(a)(3) or Section 3(37) of ERISA (a) to which any Company or any ERISA Affiliate is then making or accruing an

obligation to make contributions, (b) to which any Company or any ERISA Affiliate has within the preceding six plan years made contributions, or (c) with respect to which any Company could incur liability.

"**Net Cash Proceeds**" shall mean:

(a) with respect to any Asset Sale (other than any issuance or sale of Equity Interests), the proceeds thereof in the form of cash, cash equivalents and marketable securities (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable, or by the sale, transfer or other disposition of any non-cash consideration received in connection therewith or otherwise, but only as and when received) received by any Company (including cash proceeds subsequently received (as and when received by any Company) in respect of non-cash consideration initially received) net of (i) reasonable and customary selling expenses (including reasonable brokers' fees or commissions, legal, accounting and other professional and transactional fees, transfer and similar taxes and Borrower's good faith estimate of income taxes paid or payable in connection with such sale (after taking into account any available tax credits or deductions and any tax sharing arrangements)), (ii) amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations associated with such Asset Sale (*provided* that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds), (iii) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness that is secured by a Lien on the properties sold in such Asset Sale (so long as such Lien was permitted to encumber such properties under the Loan Documents at the time of such sale) and which is repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such properties) and (iv) any cash distributions or other payments required to be made under, and in accordance with, the Organizational Documents of an applicable Subsidiary or joint venture to minority interest equity holders in such Subsidiary or joint venture, as the case may be, as a result of such Asset Sale, *provided*, that such cash distributions or other payments were not required to be made pursuant to any such Organizational Document in anticipation of any such sale and such Organizational Documents were not amended, modified or supplemented, directly or indirectly, with respect to any such payment in anticipation of any such sale;

(b) with respect to any Debt Issuance, any Equity Issuance or any other issuance or sale of Equity Interests by Borrower or any of its Subsidiaries, the cash proceeds thereof, net of reasonable and customary fees, commissions, costs and other expenses incurred in connection therewith; and

(c) with respect to any Casualty Event, the cash insurance proceeds, condemnation awards and other compensation received in respect thereof, net of all reasonable costs and expenses incurred in connection with the collection of such proceeds, awards or other compensation in respect of such Casualty Event.

"**Net Value Factor**" shall mean, initially, the percentages set forth on Annex III attached hereto, as such percentages may be reasonably adjusted upwards or downwards by the Collateral Manager based on objective historical performance and actual collection history.

"**Non-Recourse Debt**" shall mean Indebtedness: (i) as to which neither Borrower nor any of its Subsidiaries (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness), (b) is directly or indirectly liable (whether such liability is actual or contingent) as a guarantor, surety, debtor, obligor or otherwise, or (c) constitutes the lender or other creditor; (ii) no default or event of default with respect to which would permit (whether upon notice, lapse of time,

satisfaction of any other condition or otherwise), any holder of any other Indebtedness of Borrower or any of its Subsidiaries to declare a default or event of default on such other Indebtedness or cause the payment of any such Indebtedness to be accelerated or payable prior to its stated final maturity.

"**Non-Utilization Fee**" shall have the meaning assigned to such term in Section 2.05(a).

"**Notes**" shall mean any notes evidencing the Revolving Loans or Swingline Loans issued pursuant to Section 2.04(e) of this Agreement, if any, substantially in the form of Exhibit H-1 or H-2, respectively.

"**Notice to Obligors**" shall have the meaning provided in the Collateral Management Agreement.

"**Obligations**" shall mean (a) all obligations of Borrower and the other Loan Parties from time to time arising under or in respect of the due and punctual payment of (i) the principal of and premium, if any, and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, (ii) each payment required to be made by Borrower and the other Loan Parties under this Agreement in respect of any Letter of Credit, when and as due, including payments in respect of Reimbursement Obligations, interest thereon and obligations to provide cash collateral and (iii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of Borrower and the other Loan Parties under this Agreement and the other Loan Documents, (b) the due and punctual performance of all covenants, agreements, obligations and liabilities of Borrower and the other Loan Parties under or pursuant to this Agreement and the other Loan Documents, (c) the due and punctual payment and performance of all obligations of Borrower and the other Loan Parties under each Hedging Agreement relating to the Loans entered into with any counterparty that was a Lender or an Affiliate of a Lender at the time such Hedging Agreement was entered into, and (d) the due and punctual payment and performance of all obligations in respect of overdrafts and related liabilities owed to any Lender, any Affiliate of a Lender, the Administrative Agent or the Collateral Agent arising from treasury, depositary and cash management services or in connection with any automated clearinghouse transfer of funds.

"**Obligor**" shall mean each person who is responsible for the payment of all or any portion of a Receivable.

"**OFAC**" shall have the meaning assigned to such term in Section 3.23.

"**Off-Balance Sheet Obligations**" of a person shall mean, without duplication, (a) any repurchase obligation or liability of such person with respect to accounts or notes receivable sold by such person, (b) any Synthetic Lease Obligations of such person, or (c) any indebtedness, liability or obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheets of such person (other than operating leases).

"**Officers' Certificate**" shall mean a certificate executed by (i) any one of the Responsible Officers, and (ii) any one of the Financial Officers, each in his or her official (and not individual) capacity.

"**OLV**" shall mean the "net orderly liquidation value" determined by the Collateral Manager based upon the most recent Approved Valuation, as such valuation may be subsequently adjusted by the Collateral Manager based on reasonably objective historical performance and actual liquidation value with respect to

the Loan Parties' Inventory, and based upon the most recent Borrowing Base Certificate delivered to the Collateral Manager by Borrower pursuant to Section 5.15(g)(ii).

"**Order**" shall mean any judgment, decree, order, consent order, consent decree, writ or injunction.

"**Organizational Documents**" shall mean, with respect to any person, (i) in the case of any corporation, the certificate of incorporation and by-laws (or similar documents) of such person, (ii) in the case of any limited liability company, the certificate of formation and operating agreement (or similar documents) of such person, (iii) in the case of any limited partnership, the certificate of formation and limited partnership agreement (or similar documents) of such person, (iv) in the case of any general partnership, the partnership agreement (or similar document) of such person, (v) in any other case, the functional equivalent of the foregoing, and (vi) any shareholder, voting trust or similar agreement between or among any holders of Equity Interests of such person.

"**Other List**" shall have the meaning assigned to such term in Section 6.20.

"**Other Taxes**" shall mean any and all present or future stamp or documentary taxes or any other excise or property taxes, charges (including fees and expenses to the extent incurred with respect to any such taxes or charges) or similar levies (including interest, fines, penalties and additions with respect to any of the foregoing) arising from any payment made or required to be made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

"**Participant**" shall have the meaning assigned to such term in Section 11.04(e).

"**Patriot Act**" shall have the meaning assigned to such term in Section 3.23.

"**PBGC**" shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

"**Pension Plan**" shall mean any Employee 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 which is maintained or contributed to by any Company or any of their respective ERISA Affiliates or with respect to which any Company could incur liability (including under Section 4069 of ERISA) for which the Company has not received a binding, contractual right of indemnification unlimited in time or amount and in respect of which the indemnitor has acknowledged in writing to the Company its unconditional obligation to so indemnify.

"**Perfection Certificate**" shall mean a perfection certificate in the form of Exhibit I-1 or any other form approved by the Collateral Agent, as the same shall be supplemented from time to time by a Perfection Certificate Supplement or otherwise.

"**Perfection Certificate Supplement**" shall mean a perfection certificate supplement in the form of Exhibit I-2 or any other form approved by the Collateral Agent.

"**Permits**" shall mean, collectively, all licenses, leases, powers, Permits, franchises, certificates, authorizations, approvals, consents, variances, exemptions, certificates of need, certifications, Orders and other rights.

"**Permitted Acquisition**" shall mean any transaction or series of related transactions for the direct or indirect (a) acquisition of all or substantially all of the property of any person, or all or substantially all of any business or division of any person, (b) acquisition of in excess of 50% of the Equity Interests of any

person, and otherwise causing such person to become a Subsidiary of such person, or (c) merger or consolidation or any other combination with any person, if each of the following conditions is met:

(i) no Default then exists or would result therefrom;

(ii) with respect to any transaction involving Acquisition Consideration of $5,000,000 or more, Borrower shall certify to Administrative Agent prior to the consummation of such transaction that it is in compliance with the Pro Forma Condition, and with respect to any transaction involving Acquisition Consideration of $10,000,000 or more, Borrower shall have received the prior written consent of the Required Lenders;

(iii) after giving effect to such transaction on a Pro Forma Basis, the aggregate amount of (A) all Unrestricted Domestic Cash and Cash Equivalents and (B) the undrawn and available portion of the Revolving Commitments shall be at least $20,000,000;

(iv) no Company shall, in connection with any such transaction, assume or remain liable with respect to any Indebtedness or other liability (including any material tax or ERISA liability) of the related seller or the business, person or properties acquired, except (A) Indebtedness to the extent permitted to be incurred under Section 6.01 and (B) obligations not constituting Indebtedness incurred in the ordinary course of business and necessary or desirable to the continued operation of the underlying properties, and any other such liabilities or obligations not permitted to be assumed or otherwise supported by any Company hereunder shall be paid in full or released as to the business, persons or properties being so acquired on or before the consummation of such acquisition;

(v) the person or business to be acquired shall be, or shall be engaged in, a business of the type that Borrower and its Subsidiaries are then permitted to be engaged in under Section 6.15 and the property acquired in connection with any such transaction shall be made subject to the Lien of the Security Documents in accordance with Section 5.11 and shall be free and clear of any Liens, other than Permitted Liens;

(vi) if the person to be acquired is a public company, the Board of Directors of such person shall not have publicly indicated its opposition to the consummation of such acquisition or, if such Board of Directors has indicated its opposition publicly, such opposition has been publicly withdrawn;

(vii) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all Legal Requirements applicable thereto;

(viii) with respect to any transaction involving Acquisition Consideration of $5,000,000 or more, Borrower shall have provided the Administrative Agent and the Lenders with (A) historical financial statements for the last three fiscal years (or the applicable lesser number thereof if the person or business to be acquired has existed for a lesser period) of the person or business to be acquired (audited if available without undue cost or delay) and unaudited financial statements thereof for the most recent interim period that is available, (B) monthly projections for the following year and quarterly projections for the two years thereafter (or, if sooner, through the Scheduled Maturity Date), in each case, in detail comparable to the financial statements delivered pursuant to Section 5.01(c) or 5.01(b), respectively, pertaining to the person or business to be acquired and updated projections for Borrower after giving effect to such transaction, (C) a reasonably detailed description of all material information relating thereto and copies of all material documentation pertaining to

such transaction, and (D) all such other information and data relating to such transaction or the person or business to be acquired as may be reasonably requested by the Administrative Agent or any Lender, to the extent made available to or otherwise obtainable by Borrower or such Subsidiary;

(ix) such transaction could not reasonably be expected to result in a Material Adverse Effect;

(x) at least 5 Business Days prior to the proposed date of consummation of the transaction, Borrower shall have delivered to the Administrative Agent and the Lenders an Officers' Certificate certifying that (A) such transaction complies with this definition (which shall have attached thereto reasonably detailed backup data and calculations showing such compliance), and (B) no Default or Event of Default exists or would result therefrom;

(xi) the aggregate Acquisition Consideration (x) for all Permitted Acquisitions consummated during the fiscal year 2011, shall not exceed $20,000,000, (y) for all Permitted Acquisitions consummated in any subsequent fiscal year, shall not exceed $35,000,000, and (z) for all Permitted Acquisitions after the first anniversary of the Restatement Date shall not exceed $120,000,000; *provided* that no Equity Interests constituting all or a portion of such Acquisition Consideration shall require any payments or other distributions of cash or property in respect thereof, or any purchases, redemptions or other acquisitions thereof for cash or property, in each case prior to the 91st day following payment in full and performance of the Obligations; and

(xii) (a) in the case of an acquisition of all or substantially all of the property of any person, the person making such acquisition is, or immediately upon consummation of the Permitted Acquisition becomes, Borrower or a Domestic Subsidiary and a Guarantor, (b) in the case of an acquisition of in excess of 50% of the Equity Interests of any person, both the person making such acquisition and the person so acquired is, or immediately upon consummation of the Permitted Acquisition becomes, Borrower or a Domestic Subsidiary and a Guarantor, and (c) in the case of a merger or consolidation or any other combination with any person, the person surviving such merger, consolidation or other combination is, or immediately upon consummation of the Permitted Acquisition becomes, Borrower or a Domestic Subsidiary and a Guarantor.

"**Permitted Discretion**" shall mean the reasonable exercise of the Collateral Manager's good faith judgment in consideration of any factor which is reasonably likely to (i) materially adversely affect the value of any Collateral, the enforceability or priority of the Liens thereon or the amount that the Administrative Agent and the Lenders would be likely to receive (after giving consideration to delays in payment and costs of enforcement) in the liquidation thereof, (ii) suggest that any collateral report or financial information delivered to the Administrative Agent, the Collateral Agent, the Collateral Manager or the Lenders by any person on behalf of Borrower or any Subsidiary is incomplete, inaccurate or misleading in any material respect, or (iii) materially increase the likelihood that the Secured Parties would not receive payment in full in cash for all of the Obligations. In exercising such judgment, the Collateral Manager may consider such factors already included in or tested by the definition of Eligible Receivables or Eligible Inventory, as well as any of the following: (i) the changes in collection history and dilution, collectibility or expected collection amounts with respect to the Accounts; (ii) changes in demand for, pricing of, or product mix of Inventory; (iii) changes in any concentration of risk with respect to the Loan Parties' Accounts or Inventory; and (iv) any other factors that change the credit risk of lending to Borrower or any Loan Party on the security of Borrower's or any Loan Party's Accounts or Inventory. The burden of establishing lack of good faith under this definition shall be on the Loan Parties.

"**Permitted Joint Venture**" shall mean any person that is organized under the laws of the United States or any subsidiary thereto or the District of Columbia and which is, directly or indirectly, through its subsidiaries or otherwise, engaged in any business that is engaged in by Borrower and its Subsidiaries on the Closing Date (or which is ancillary thereto, reasonably related thereto or are reasonable extensions thereof or complementary thereto), and the Equity Interests of which (i) are owned by Borrower or a Subsidiary and one or more persons other than Borrower or any Affiliate of Borrower or (ii) is acquired by Borrower or a Subsidiary, so long as Borrower and its Subsidiaries shall be in compliance with the Pro Forma Condition immediately after giving effect to such acquisition.

"**Permitted Liens**" shall have the meaning assigned to such term in Section 6.02.

"**person**" shall mean any natural person, corporation, business trust, joint venture, association, company, limited liability company, partnership or government, any agency or political subdivision thereof, or any other entity, in any case, whether acting in a personal, fiduciary or other capacity.

"**Platform**" shall have the meaning assigned to such term in Section 11.01(d).

"**Pledgor**" shall mean each Subsidiary listed on Schedule 1.01(d), and each other Subsidiary of any Loan Party that is or becomes a party to this Agreement (in its capacity as a Subsidiary Guarantor) and the Security Documents pursuant to Section 5.11.

"**Pre-Restatement Lien**" shall have the meaning assigned to such term in Section 6.02(c).

"**Preferred Stock**" shall mean, with respect to any person, any and all preferred or preference Equity Interests (however designated) of such person whether now outstanding or issued after the Closing Date.

"**Preferred Stock Issuance**" shall mean the issuance or sale by any Company of any Preferred Stock after the Closing Date.

"**Premises**" shall have the meaning assigned thereto in the applicable Mortgage.

"**Pro Forma Basis**" shall mean, with respect to compliance with any test or covenant hereunder, compliance with such covenant or test after giving effect, as applicable, to (a) (i) the Acquisition, (ii) any proposed Permitted Acquisition, or (iii) any Asset Sale as if the Acquisition or such Permitted Acquisition or Asset Sale, and all other Permitted Acquisitions or Asset Sales consummated during the period, and any Indebtedness or other liabilities incurred in connection with such Acquisition or any such Permitted Acquisitions or Asset Sales had been consummated and incurred at the beginning of such period, and (b) any cost savings (such as through consolidations or workforce reductions) reasonably satisfactory to the Administrative Agent and reasonably expected by Borrower to be realized upon or arise during the period as a result of such acquisition as if such cost savings had been realized at the beginning of such period. For purposes of this definition, if any Indebtedness to be so incurred bears interest at a floating rate and is being given pro forma effect, the interest on such Indebtedness will be calculated as if the rate in effect on the date of incurrence had been the applicable rate for the entire period (taking into account any applicable interest rate Hedging Agreements).

"**Pro Forma Condition**" shall mean, with respect to any proposed Permitted Acquisition, proposed Permitted Joint Venture, proposed Investment or proposed incurrence of Indebtedness, after giving effect to such transaction on a Pro Forma Basis, (A) Borrower shall be in compliance with all covenants set forth in Section 6.10 as of the most recent Test Period (assuming, for purposes of Section 6.10, that such transaction had occurred on the first day of such relevant Test Period, and (B) with respect to any proposed Permitted

Acquisition, the person or business to be acquired shall have generated positive cash flow for the Test Period most recently ended prior to the date of consummation of such proposed Permitted Acquisition.

"**Pro Rata Percentage**" of any Revolving Lender at any time shall mean the percentage of the total Revolving Commitments of all Revolving Lenders represented by such Lender's Revolving Commitment.

"**Pro Rata Share**" shall have the meaning assigned to such term in Section 7.10.

"**Programs**" shall have the meaning assigned to such term in Section 3.19(a).

"**Program Agreements**" shall have the meaning assigned to such term in Section 3.19(a).

"**Projections**" shall have the meaning assigned to such term in Section 3.04(c).

"**property**" shall mean any right, title or interest in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible and including Equity Interests of any person and whether now in existence or owned or hereafter entered into or acquired, including all Real Property, cash, securities, accounts, revenues and contract rights.

"**Purchase Money Obligation**" shall mean, for any person, the obligations of such person in respect of Indebtedness (including Capital Lease Obligations) incurred for the purpose of financing all or any part of the purchase price of any property (including Equity Interests of any person) or the cost of installation, construction or improvement of any property and any refinancing thereof; *provided*, *however*, that (i) such Indebtedness is incurred within 60 days after such acquisition, installation, construction or improvement of such property by such person and (ii) the amount of such Indebtedness does not exceed 100% of the cost of such acquisition, installation, construction or improvement, as the case may be.

"**Qualified Capital Stock**" of any person shall mean any Equity Interests of such person that are not Disqualified Capital Stock.

"**Real Property**" shall mean, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned, leased or operated by any person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

"**Rebate Receivable**" shall mean a Receivable, the Obligor of which is a manufacturer or distributor of pharmaceutical products.

"**Receivable Information**" shall mean the information listed on Exhibit II to the Collateral Management Agreement (as such Exhibit may be modified by the Collateral Manager from time to time, subject to Section 11.02 hereof).

"**Receivables**" shall have the meaning assigned to the term "Accounts" in the Security Agreement.

"**Refinancing**" shall have the meaning assigned to such term in the recitals hereto.

"**Refinancing Documents**" shall mean the documents, instruments and agreements entered into in connection with the Refinancing.

"**Register**" shall have the meaning assigned to such term in Section 11.04(c).

"**Regulation D**" shall mean Regulation D of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"**Regulation T**" shall mean Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"**Regulation U**" shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"**Regulation X**" shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"**Reimbursement Approvals**" shall mean any and all certifications, provider or supplier numbers, provider or supplier agreements (including Medicare Provider Agreements and Medicaid Provider Agreements), participation agreements, Accreditations and/or any other agreements with or approvals by Medicare, Medicaid, CHAMPUS, CHAMPVA, TRICARE, Veteran's Administration and any other Governmental Authority, or quasi-public agency, Blue Cross/Blue Shield, any and all managed care plans and organizations, including Medicare Advantage plans, Medicare Part D prescription drug plans, health maintenance organizations and preferred provider organizations, private commercial insurance companies, employee assistance programs and/or any other governmental or third party arrangements, plans or programs for payment or reimbursement in connection with health care services, products or supplies.

"**Reimbursement Obligations**" shall mean Borrower's obligations under Section 2.18(e) to reimburse LC Disbursements.

"**Reimbursement Undertaking**" has the meaning set forth in Section 2.18(a).

"**Related Person**" shall mean, with respect to any person, (a) each Affiliate of such person and each of the officers, directors, partners, trustees, employees, affiliates, shareholders, Advisors, agents, attorneys-in-fact and Controlling persons of each of the foregoing, and (b) if such person is an Agent, each other person designated, nominated or otherwise mandated by or assisting such Agent pursuant to Section 10.05 or any comparable provision of any Loan Document.

"**Release**" shall mean any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, emanating or migrating of any Hazardous Materials in, into, onto, from or through the Environment or any Real Property.

"**Required Lenders**" shall mean, at any time, Lenders having Loans, LC Exposure and unused Revolving Commitments representing 66.66% or more of the sum of all Loans outstanding, LC Exposure and unused Revolving Commitments at such time.

"**Response**" shall mean (a) "response" as such term is defined in CERCLA, 42 U.S.C. § 9601(25) or any other applicable Environmental Law, or (b) all other actions required by any Governmental Authority or voluntarily undertaken to (i) clean up, remove, treat, abate, monitor or in any other way address any Hazardous Materials at, in, on, under or from any Real Property, or otherwise in the Environment, (ii) prevent the Release or threat of Release, or minimize the further Release, of any Hazardous Material, or (iii) perform studies and investigations in connection with, or as a precondition to, clause (i) or (ii) above.

"**Responsible Officers**" of any person shall mean each of the president, the chief operating officer, the executive vice president and general counsel and each Financial Officer of such person with responsibility for the administration of the obligations of such person in respect of this Agreement and the other Loan Documents.

"**Restatement Date**" shall mean, subject to the satisfaction of the conditions herein, December 28, 2010.

"**Restatement Documents**" shall mean each Assignment and Acceptance Agreement, dated on or about the Restatement Date, with each Assigning Lender, with respect to the Revolving Commitment and Loans of such Assigning Lender outstanding immediately prior to the Restatement Date, any documents underlying the repayment in full of each Term Loan Non-Assigning Lender with respect to the Term Loans of such Term Loan Non-Assigning Lender outstanding immediately prior to the Restatement Date, the amendment and restatement, dated as of the Restatement Date, of this Agreement, the Security Agreement and the Collateral Management Agreement, and each other Security Document or pledge agreement delivered as of the Restatement Date, and all amendments to UCC or other financing statements or instruments of perfection required by this Agreement, the Security Agreement, the Collateral Management Agreement, any Mortgage, any Control Agreement or any other such Security Document or pledge agreement to be filed with respect to the security interests in property created pursuant to the Security Agreement, the Collateral Management Agreement, any Mortgage, any Control Agreement and any other document or instrument utilized to pledge any property as Collateral for the Obligations as of the Restatement Date.

"**Restatement Transactions**" shall mean, collectively, the transactions to occur pursuant to, or contemplated by, this Agreement, the Restatement Documents, including (a) the assignment and assumption of the Loans of the Assigning Lenders immediately prior to the Restatement Date, (b) the repayment in full of all Term Loans of the Term Loan Non-Assigning Lenders, (c) the repayment in full of the Term Loans of HF-4, (d) the execution, delivery and performance of this Agreement as so amended and restated and the other Loan Documents, as they may be amended and restated as of the Restatement Date, and the initial Credit Extensions hereunder on the Restatement Date, and (e) the payment of all fees, costs and expenses to be paid on or prior to the Restatement Date owing in connection with the foregoing.

"**Revolving Availability Period**" shall mean the period from and including the Closing Date to but excluding the earliest of (i) the Business Day preceding the Scheduled Maturity Date, (ii) the Maturity Date, or (iii) any other date of termination of the Revolving Commitments.

"**Revolving Borrowing**" shall mean a Borrowing comprised of Revolving Loans.

"**Revolving Commitment**" shall mean, with respect to each Lender, the commitment, if any, of such Lender to make Revolving Loans hereunder up to the amount set forth on Annex II or on Schedule 1 to the Assignment and Acceptance pursuant to which such Lender assumed its Revolving Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.07 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 11.04. The aggregate principal amount of the Lenders' Revolving Commitments on the Amendment Date is $150,000,000.

"**Revolving Exposure**" shall mean, with respect to any Lender at any time, the aggregate principal amount at such time of all outstanding Revolving Loans of such Lender, *plus* the aggregate amount at such time of such Lender's LC Exposure, *plus* the aggregate amount at such time of such Lender's Swingline Exposure.

"**Revolving Lender**" shall mean a Lender with a Revolving Commitment.

"**Revolving Loan**" shall mean a Loan made by the Lenders to Borrower pursuant to Article II.

"**Sale and Leaseback Transaction**" shall have the meaning assigned to such term in Section 6.03.

"**Sarbanes-Oxley Act**" shall mean the United States Sarbanes-Oxley Act of 2002, as amended, and all rules and regulations promulgated thereunder.

"**Scheduled Maturity Date**" shall mean the earliest to occur of (i) March 25, 2015, if the "stated maturity" under the Senior Note Agreement is not extended from the date in effect on the Restatement Date, and (ii) if the Senior Note Agreement is amended to extend the "stated maturity" from the date in effect on the Restatement Date, the earlier to occur of (x) the date which is six months prior to such new "stated maturity date" and (y) December 28, 2015.

"**SDN List**" shall have the meaning assigned to such term in Section 6.20.

"**Secured Parties**" shall mean, collectively, the Administrative Agent, the Collateral Agent, each other Agent, the Lenders and each party to a Hedging Agreement relating to the Loans if at the date of entering into such Hedging Agreement such person was an Agent, a Lender or an Affiliate of an Agent or Lender and such person executes and delivers to the Administrative Agent a letter agreement in form and substance acceptable to the Administrative Agent pursuant to which such person (i) appoints the Administrative Agent and the Collateral Agent as its agents under the applicable Loan Documents and (ii) agrees to be bound by the provisions of Section 11.03 and Section 11.09.

"**Securities Act**" shall mean the Securities Act of 1933, as amended.

"**Security Agreement**" shall mean that certain Amended and Restated Security Agreement, dated as of the Closing Date and amended and restated as of the Restatement Date, substantially in the form of Exhibit J among the Loan Parties and the Collateral Agent for the benefit of the Secured Parties, as the same may be supplemented from time to time by one or more Joinder Agreements, or otherwise.

"**Securities Collateral**" shall have the meaning assigned to such term in the Security Agreement.

"**Security Agreement Collateral**" shall mean all property pledged or granted as collateral pursuant to the Security Agreement delivered on the Closing Date or thereafter pursuant to Section 5.11.

"**Security Documents**" shall mean the Security Agreement, the Collateral Management Agreement, the ABDC Intercreditor Agreement (together with each other intercreditor agreement substantially in the form of the Supplier Intercreditor Agreement), the Mortgages (if any), each Depositary Agreement, each Control Agreement and each other security document or pledge agreement delivered in accordance with applicable local or foreign Legal Requirements to grant a valid, enforceable, perfected security interest (with the priority required under the Loan Documents) in any property as collateral for the Obligations, and all UCC or other financing statements or instruments of perfection required by this Agreement, the Security Agreement, the Collateral Management Agreement, the ABDC Intercreditor Agreement (together with each other intercreditor agreement substantially in the form of the Supplier Intercreditor Agreement), any Mortgage, any Control Agreement or any other such security document or pledge agreement to be filed with respect to the security interests in property created pursuant to the Security Agreement, the Collateral Management Agreement, the ABDC Intercreditor Agreement (together with each other intercreditor agreement substantially in the form of the Supplier Intercreditor Agreement), any Mortgage, any Control

Agreement and any other document or instrument utilized to pledge any property as collateral for the Obligations.

"**Senior Note Agreement**" shall mean any indenture, note purchase agreement or other agreement pursuant to which the Senior Notes are issued as in effect on the date hereof and thereafter amended, supplemented, waived or modified from time to time subject to the requirements of this Agreement.

"**Senior Note Documents**" shall mean the Senior Notes, the Senior Note Agreement, the Senior Note Guarantees and all other documents executed and delivered with respect to the Senior Notes or the Senior Note Agreement.

"**Senior Note Guarantees**" shall mean the guarantees of the Subsidiary Guarantors pursuant to the Senior Note Agreement, including any guarantee of the Exchange Senior Notes issued pursuant to the Senior Note Agreement in exchange for the outstanding Senior Notes.

"**Senior Notes**" shall mean Borrower's 10.25% Senior Notes due 2015 issued pursuant to the Senior Note Agreement and any registered notes issued by Borrower in exchange for, and as contemplated by, such notes with substantially identical terms as such notes. As used in this Agreement, the term "Senior Notes" shall include any Exchange Senior Notes issued pursuant to the Senior Note Agreement in exchange for the outstanding Senior Notes, as contemplated by the definition of Exchange Senior Notes.

"**SPC**" shall have the meaning assigned to such term in Section 11.04(h).

"**Standby Letter of Credit**" shall mean any letter of credit (other than a Commercial Letter of Credit) or similar instrument issued pursuant to this Agreement in the ordinary course of Borrower's and its Subsidiaries' businesses.

"**Statutory Reserves**" shall mean for any Borrowing, the average maximum rate at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during a three Month period under Regulation D by member banks of the United States Federal Reserve System in New York City with deposits exceeding one billion Dollars against "Eurocurrency liabilities" (as such term is used in Regulation D). Borrowings shall be deemed to constitute Eurodollar liabilities and to be subject to such reserve requirements without benefit of or credit for proration, exceptions or offsets which may be available from time to time to any Lender under Regulation D.

"**Subordinated Indebtedness**" shall mean Indebtedness of any Company that is by its terms subordinated in right of payment to all of the Obligations.

"**Subsidiary**" shall mean, with respect to any person (the "**parent**") at any date, (i) any person 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, (ii) any other corporation, limited liability company, association or other business entity of which securities or other ownership interests representing more than 50% of the voting power of all Equity Interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Board of Directors thereof are, as of such date, owned, controlled or held by the parent and/or one or more subsidiaries of the parent, (iii) any partnership (a) the sole general partner or the managing general partner of which is the parent and/or one or more subsidiaries of the parent or (b) the only general partners of which are the parent and/or one or more subsidiaries of the parent and (iv) any other person that is otherwise Controlled by the parent and/or one or more subsidiaries of the parent.

"**Subsidiary Guarantor**" shall mean each Subsidiary of any Loan Party that is or becomes a party to this Agreement and the Security Documents pursuant to Section 5.11, including the Subsidiaries listed on Schedule 1.01(c).

"**Supplier Intercreditor Agreement**" shall mean an intercreditor agreement, substantially in the form of Exhibit M among the Loan Parties, the Collateral Agent for the benefit of the Secured Parties and one or more second lien creditors to the Loan Parties (including an agent or representative of all or any such creditors), as amended, supplemented, waiver or otherwise modified from time to time in accordance with the terms hereof and thereof.

"**Swingline Commitment**" shall mean the commitment of the Swingline Lender to make loans pursuant to Section 2.17, as the same may be reduced from time to time pursuant to Section 2.07 or Section 2.17. The aggregate principal amount of the Swingline Commitment shall be $10,000,000, but the Swingline Commitment shall in no event exceed the Revolving Commitment.

"**Swingline Exposure**" shall mean at any time the aggregate principal amount at such time of all outstanding Swingline Loans. The Swingline Exposure of any Revolving Lender at any time shall equal its Pro Rata Percentage of the aggregate Swingline Exposure at such time.

"**Swingline Lender**" shall have the meaning assigned to such term in the preamble hereto.

"**Swingline Loan**" shall mean any loan made by the Swingline Lender pursuant to Section 2.17.

"**Synthetic Lease**" shall mean, as to any person, any lease (including leases that may be terminated by the lessee at any time) of any property (i) that is accounted for as an operating lease under GAAP and (ii) in respect of which the lessee retains or obtains ownership of the property so leased for U.S. federal income tax purposes, other than any such lease under which such person is the lessor.

"**Synthetic Lease Obligations**" shall mean, as to any person, an amount equal to the capitalized amount of the remaining lease payments under any Synthetic Lease that would appear on a balance sheet of such person in accordance with GAAP if such obligations were accounted for as Capital Lease Obligations.

"**Target**" shall have the meaning assigned to such term in the recitals hereto.

"**Tax Returns**" shall mean all returns, statements, filings, attachments and other documents or certifications filed or required to be filed in respect of Taxes.

"**Taxes**" shall mean (i) any and all present or future taxes, duties, levies, imposts, assessments, deductions, withholdings or other similar charges, whether computed on a separate, consolidated, unitary, combined or other basis and any and all liabilities (including interest, fines, penalties or additions with respect to any of the foregoing) with respect to the foregoing, and (ii) any transferee, successor, joint and several, contractual or other liability (including liability pursuant to Treasury Regulation § 1.1502-6 (or any similar provision of state, local or non-U.S. law)) in respect of any item described in clause (i).

"**Term Loan Lender**" shall mean a Lender with an outstanding Term Loan immediately prior to the Restatement Date.

"**Term Loan Non-Assigning Lender"** means each Term Loan Lender other than HF-4 that is not an Assigning Lender.

"**Term Loans**" shall mean the term loans made by the Lenders to Borrower pursuant to the Existing Credit Agreement and outstanding immediately prior to the Restatement Date.

"**Test Period**" shall mean, at any time, the four consecutive fiscal quarters of Borrower then last ended (in each case taken as one accounting period) for which financial statements have been or are required to be delivered pursuant to Section 5.01(a) or (b).

"**Third-Party Payor Contracts**" shall have the meaning assigned to such term in Section 3.19(a).

"**Third-Party Payors**" shall have the meaning assigned to such term in Section 3.19(a).

"**Title Company**" shall mean any title insurance company as shall be retained by Borrower and reasonably acceptable to the Administrative Agent.

"**Title Policy**" shall mean, with respect to each Mortgage, a policy of title insurance (or marked-up title insurance commitment having the effect of a policy of title insurance) insuring the Lien of such Mortgage as a valid first mortgage Lien on the Mortgaged Property and fixtures described therein in the amount equal to not less than the Fair Market Value of such Mortgaged Property and fixtures, which policy (or such marked-up commitment) shall be issued by the Title Company, and contain such endorsements as shall be reasonably requested by the Collateral Agent and no exceptions to title other than exceptions reasonably acceptable to the Collateral Agent.

"**Transaction Documents**" shall mean the Acquisition Documents, the Refinancing Documents, the Senior Note Documents and the Loan Documents.

"**Transactions**" shall mean, collectively, the transactions to occur pursuant to, or contemplated by, the Transaction Documents, including (a) the consummation of the Acquisition, (b) the execution, delivery and performance of the Loan Documents and the initial Credit Extensions hereunder, (c) the consummation of the Refinancing, (d) the execution, delivery and performance of the Senior Note Documents and the initial borrowings thereunder, and (e) the payment of all fees, costs and expenses to be paid on or prior to the Closing Date owing in connection with the foregoing.

"**TRICARE/CHAMPUS**" shall mean the Civilian Health and Medical Program of the Uniformed Service, a program of medical benefits covering former and active members of the uniformed services and certain of their dependents, financed and administered by the United States Departments of Defense, Health and Human Services and Transportation and established pursuant to 10 USC §§ 1071-1106, and all regulations promulgated thereunder including without limitation (a) all federal statutes (whether set forth in 10 USC §§ 1071-1106 or elsewhere) affecting TRICARE/CHAMPUS, and (b) all rules, regulations (including 32 CFR 199), manuals, orders and administrative, reimbursement and other guidelines of all Governmental Authorities (including, without limitation, the Department of Health and Human Services, the Department of Defense, the Department of Transportation, the Assistant Secretary of Defense (Health Affairs), and the Office of TRICARE/CHAMPUS, or any person or entity succeeding to the functions of any of the foregoing) promulgated pursuant to or in connection with any of the foregoing (whether or not having the force of law) in each case as may be amended, supplemented or otherwise modified from time to time.

"**UCC**" shall mean the Uniform Commercial Code as in effect from time to time (except as otherwise specified) in any applicable state or jurisdiction.

"**Unbilled Receivable**" shall mean a Receivable in respect of which the goods have been shipped, or the services rendered, and rights to payment thereon have accrued, but the invoice has not been rendered to the applicable Obligor.

"**Underlying Issuer**" means Wells Fargo Bank, National Association or one of its Affiliates.

"**Underlying Letter of Credit**" means a Letter of Credit that has been issued by an Issuing Lender or Underlying Issuer.

"**Unfunded Pension Liability**" shall mean the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the actuarial assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

"**United States**" and "**U.S.**" shall mean the United States of America.

"**Unrestricted Domestic Cash and Cash Equivalents**" shall mean domestic cash and Cash Equivalents of Borrower and the Subsidiaries that are free and clear of all Liens, not subject to any restrictions on the use thereof to pay Indebtedness and other obligations of any of the Loan Parties or any of their respective Subsidiaries and subject to a Control Account in favor of the Collateral Agent.

"**Voting Stock**" shall mean, with respect to any person, any class or classes of Equity Interests pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the Board of Directors of such person.

"**Wholly Owned Subsidiary**" shall mean, as to any person, (a) any corporation 100% of whose capital stock (other than directors' qualifying shares) is at the time owned by such person and/or one or more Wholly Owned Subsidiaries of such person and (b) any partnership, association, joint venture, limited liability company or other entity in which such person and/or one or more Wholly Owned Subsidiaries of such person have a 100% equity interest at such time.

Section 1.02 **Terms Generally**. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The phrase "Material Adverse Effect" shall be deemed to be followed by the phrase ", individually or in the aggregate." The word "asset" shall be construed to have the same meaning and effect as the word "property." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any Loan Document, agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in any Loan Document), (b) any reference herein to any person shall be construed to include such person's successors and assigns, (c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof and (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, unless otherwise indicated. This Section 1.02 shall apply, *mutatis mutandis*, to all Loan Documents.

Section 1.03 **Accounting Terms; GAAP**. Except as otherwise expressly provided herein, all financial statements to be delivered pursuant to this Agreement shall be prepared in accordance with GAAP

as in effect from time to time and all terms of an accounting or financial nature shall be construed and interpreted in accordance with GAAP, as in effect on the date hereof. If at any time any change in GAAP would affect the computation of any financial ratio set forth in any Loan Document, and Borrower or the Administrative Agent shall so request, the Administrative Agent and Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to approval by the Required Lenders and Borrower); *provided* that, until so amended, such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein, and Borrower shall provide to the Administrative Agent and the Lenders within five days after delivery of each certificate or financial report required hereunder that is affected thereby a written statement of a Financial Officer of Borrower setting forth in reasonable detail the differences (including any differences that would affect any calculations relating to the financial covenants as set forth in Section 6.10) that would have resulted if such financial statements had been prepared without giving effect to such change.

Section 1.04 **Pro Forma Calculations**. With respect to any period during which the Acquisition, any Permitted Acquisition or Asset Sale occurs as permitted pursuant to the terms hereof, the financial covenants set forth in Section 6.10 shall be calculated with respect to such period and the Acquisition, such Permitted Acquisition or Asset Sale on a Pro Forma Basis.

Section 1.05 **Resolution of Drafting Ambiguities**. Each Loan Party acknowledges and agrees that it was represented by counsel in connection with the execution and delivery of the Loan Documents to which it is a party, that it and its counsel reviewed and participated in the preparation and negotiation thereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation hereof or thereof.

Section 1.06 **Rounding**. Any financial ratios required to be satisfied in order for a specific action to be permitted under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Article II
THE CREDITS

Section 2.01 **Commitments**. Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Lender agrees, severally and not jointly on and after the Restatement Date to make Revolving Loans to Borrower, at any time and from time to time until the earlier of the Maturity Date and the termination of the Revolving Commitment of such Lender in accordance with the terms hereof, in an aggregate principal amount at any time outstanding that will not result in (x) such Lender's Revolving Exposure exceeding such Lender's Revolving Commitment and (y) the Revolving Exposure for all Lenders exceeding the then applicable Borrowing Base (based on the Borrowing Base Certificate last delivered). Subject to the terms, conditions and limitations set forth herein, Borrower may borrow, pay or prepay and reborrow Revolving Loans.

Section 2.02 **Revolving Loans**. (a) Each Revolving Loan shall be made by the Lenders ratably in accordance with their applicable Revolving Commitments; *provided* that the failure of any Lender to make any Revolving Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Revolving Lender shall be responsible for the failure of any other Revolving Lender to make any Revolving Loan required to be made by such other Revolving Lender). Except for Revolving Loans deemed made pursuant to Section 2.18(e)(ii), (x) any Borrowing shall be in an aggregate

principal amount that is (i) an integral multiple of $100,000 and not less than $250,000 or (ii) equal to the remaining available balance of the applicable Commitments.

(a) Each Revolving Lender may at its option make any Revolving Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Revolving Loan; *provided* that any exercise of such option shall not affect the obligation of the Revolving Lender to make such Revolving Loan and Borrower to repay such Revolving Loan in accordance with the terms of this Agreement.

(b) Except with respect to Revolving Loans made pursuant to Section 2.18(e)(ii), each Revolving Lender shall make each Revolving Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds to such account in New York City as the Administrative Agent may designate not later than 11:00 a.m., New York City time, and the Administrative Agent shall promptly credit the amounts so received to an account as directed by Borrower in the applicable Borrowing Request maintained with the Administrative Agent or, if a Borrowing shall not occur on such date because any condition precedent herein specified shall not have been met, return the amounts so received to the respective Lenders.

(c) Unless the Administrative Agent shall have received notice from a Revolving Lender prior to the date of any Borrowing that such Revolving Lender will not make available to the Administrative Agent such Revolving Lender's portion of such Borrowing, the Administrative Agent may assume that such Revolving Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (c) above, and the Administrative Agent may (but shall not be obligated to), in reliance upon such assumption, make available to Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Revolving Lender shall not have made such portion available to the Administrative Agent, such Revolving Lender agrees to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to Borrower until the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules or practices on interbank compensation. If such Revolving Lender shall repay to the Administrative Agent such corresponding amount, such amount shall constitute such Revolving Lender's Loan as part of such Borrowing for purposes of this Agreement, and Borrower's obligation to repay the Administrative Agent such corresponding amount pursuant to this Section 2.02(d) shall cease.

Section 2.03 **Borrowing Procedure**. To request a Revolving Borrowing, Borrower shall deliver, by hand delivery or facsimile transmission (or transmit by other electronic transmission if arrangements for doing so have been approved in writing by the Administrative Agent), a duly completed and executed Borrowing Request to the Administrative Agent not later than 12:00 noon, New York City time, on the second Business Day before the date of the proposed Borrowing (or such later time as may be reasonably acceptable to the Administrative Agent, in the case of any Borrowing, or the Issuing Lender, in the case of any issuance, amendment, extension or renewal of a Letter of Credit). Each Borrowing Request shall be irrevocable and shall specify the following information in compliance with Section 2.02:

(a) the aggregate amount of such Borrowing;

(b) the date of such Borrowing, which shall be a Business Day;

(c) the location and number of Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.02(c); and

(d) that the conditions set forth in Sections 4.02(b) - (d) are satisfied as of the date of the notice.

Section 2.04 **Evidence of Debt; Repayment of Loans**. (a) Borrower hereby unconditionally promises to pay to (i) the Administrative Agent for the account of each Revolving Lender, the then unpaid principal amount of each Revolving Loan of such Revolving Lender on the Maturity Date and (ii) the Swingline Lender, the then unpaid principal amount of each Swingline Loan on the earlier of the Maturity Date and the first date after such Swingline Loan is made that is the 15th or last day of a calendar month and is at least two Business Days after such Swingline Loan is made; *provided* that on each date that a Revolving Borrowing is made, Borrower shall repay all Swingline Loans that were outstanding on the date such Borrowing was requested.

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(b) The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder and the Class applicable thereto; (ii) the amount of any principal or interest due and payable or to become due and payable from Borrower to each Lender hereunder; and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(c) Absent manifest error, the entries made in the accounts maintained pursuant to paragraphs (b) and (c) above shall be *prima facie* evidence of the existence and amounts of the obligations therein recorded; *provided* that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of Borrower to repay the Loans in accordance with their terms.

(d) Any Lender by written notice to Borrower (with a copy to the Administrative Agent) may request that Loans of any Class made by it be evidenced by a promissory note. In such event, Borrower shall prepare promptly (and, in all events, within five Business Days of receipt of such request), execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) in the form of Exhibit H-1, or H-2, as the case may be. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 11.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

Section 2.05 **Fees**. Non-Utilization Fee. (a) Borrower shall pay to the Administrative Agent for the account of each Lender a non-utilization fee (a "**Non-Utilization Fee**") equal to the greater of (x) 0.50% *per annum* of the average daily unused amount of each Revolving Commitment of such Lender during the period from and including the Closing Date to but excluding the date on which such Revolving Commitment terminates. Accrued Non-Utilization Fees shall be payable in arrears (A) on each Interest Payment Date with respect to the prior Month, and (B) on the date on which such Commitment terminates. Non-Utilization Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). For purposes of computing Non-Utilization Fees, a Revolving Commitment of a Lender shall be deemed to be used to the extent of the outstanding Revolving

Loans and LC Exposure of such Lender, and the Swingline Exposure of such Lender shall be disregarded for such purpose.

(a) Early Termination Fee. Upon the termination of this Agreement or termination or reduction of the Revolving Commitment or any portion thereof prior to the second anniversary of the Restatement Date, Borrower shall pay to the Administrative Agent for the account of the Revolving Lenders an amount equal to the Early Termination Fee; *provided*, that no Early Termination Fee shall be payable with respect to up to $25,000,000 of the initial voluntary partial reduction of the Revolving Commitment by Borrower effectuated pursuant to Section 2.07(b).

(b) Administrative Agent Fees. Borrower agrees to pay to the Administrative Agent, for its own account, the administrative fees set forth in the Fee Letter or such other fees payable in the amounts and at the times separately agreed upon between Borrower and the Administrative Agent (the "**Administrative Agent Fees**").

(c) LC and Fronting Fees. Borrower agrees to pay to (i) the Administrative Agent for the account of each Revolving Lender a participation fee ("**LC Participation Fee**") with respect to its participations in Letters of Credit, which shall accrue at a rate per annum equal to the Applicable Margin from time to time used to determine the interest rate on Revolving Loans pursuant to Section 2.06 on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to Reimbursement Obligations) during the period from and including the Restatement Date to but excluding the later of the date on which such Lender's Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure and (ii) the Issuing Lender a fronting fee ("**Fronting Fee**"), which shall accrue at the rate of 0.125% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to Reimbursement Obligations) during the period from and including the Restatement Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure, as well as the Issuing Lender's (or Underlying Issuer's, as the case may be) customary charges with respect to the administration, issuance, amendment, negotiation, renewal or extension of any Letter of Credit or processing of drawings thereunder. Accrued LC Participation Fees and Fronting Fees shall be payable in arrears (i) on the last Business Day of March, June, September and December of each year, commencing on the first such date to occur after the Restatement Date, (ii) on the date on which the Revolving Commitments terminate. Any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Lender pursuant to this paragraph shall be payable within 10 days after demand therefor. All LC Participation Fees and Fronting Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(d) Other Fees. Borrower agrees to pay the Agents, for their own account, fees payable in the amounts and at the times separately agreed upon between Borrower and the applicable Agents.

(e) Payment of Fees. All Fees shall be paid on the dates due, in immediately available funds in Dollars, to the Administrative Agent for distribution, if and as appropriate, among the Lenders, except that Borrower shall pay the Fronting Fees directly to the Issuing Lender (or, at its direction, to the Underlying Issuer). Once paid, none of the Fees shall be refundable under any circumstances.

Section 2.06 **Interest on Loans**. (a) Subject to the provisions of Section 2.06(b), each Revolving Loan and Swingline Loan shall bear interest at a rate per annum equal to the Adjusted LIBOR Rate plus the Applicable Margin.

(a) Notwithstanding the foregoing, during an Event of Default, all Obligations shall, to the extent permitted by applicable Legal Requirements, bear interest, after as well as before judgment, at a *per annum* rate equal to (i) in the case of principal of or interest on any Loan, 2.0% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section 2.06 or (ii) in the case of any other amount, 2.0% plus the Alternate Base Rate plus the Applicable Margin (in either case, the "**Default Rate**").

(b) Accrued interest on the Revolving Loan for each Month (or such other period if remaining accrued and unpaid) shall be payable in arrears on each Interest Payment Date for such Loan on the greater of (x) the daily outstanding balance thereof during such Month (or such other period), and (y) the Minimum Revolving Balance; *provided* that (i) in calculating the greater amount between (x) and (y) above in any one Month, Borrower shall be given credit for the daily outstanding balance of Swingline Loans for such Month as if they were made as Revolving Loans (ii) interest accrued pursuant to Section 2.06(b) shall be payable on demand, and (iii) in the event of any repayment or prepayment of any Revolving Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(c) Accrued interest on the Swingline Loan shall be payable in arrears on the date of any repayment or prepayment of any Swingline Loan.

(d) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted LIBOR Rate shall be determined by the Administrative Agent in accordance with the provisions of this Agreement and such determination shall be conclusive absent manifest error.

Section 2.07 **Termination and Reduction of Commitments**. The Revolving Commitments, the Swingline Commitment and the LC Commitment shall automatically terminate on the Maturity Date.

(a) At its option, Borrower may at any time terminate, or from time to time permanently reduce, the Revolving Commitments; *provided* that (i) each reduction of the Revolving Commitments shall be in an amount that is an integral multiple of $2,500,000 and not less than $5,000,000; (ii) unless the Revolving Commitments are being terminated in full in connection with the simultaneous payment in full of all Obligations, the Revolving Commitments shall not be reduced to below $30,000,000; (iii) the Revolving Commitments shall not be terminated or reduced if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.09, the aggregate amount of Revolving Exposures would exceed the aggregate amount of Revolving Commitments; and (iv) simultaneously with any termination or reduction, Borrower shall have paid to the Administrative Agent for the benefit of the Revolving Lenders the Early Termination Fee (if any).

(b) Borrower shall notify the Administrative Agent in writing of any election to terminate or reduce the Revolving Commitments under Section 2.07(b) at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by Borrower pursuant to this Section 2.07 shall be irrevocable. Any termination or reduction of the Revolving Commitments shall be permanent. Each reduction of the Revolving Commitments shall be made ratably among the Revolving Lenders in accordance with their respective Revolving Commitments.

Section 2.08 **[Intentionally Omitted]**.

Section 2.09 **Optional and Mandatory Prepayments of Loans**. (a) Optional Prepayments. Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part; *provided* that each partial prepayment or permanent reduction in any Commitment shall be in an amount that is an integral multiple of $250,000 and not less than $500,000 and *provided, further* that following such prepayment, the outstanding principal balance of the Revolving Loan is not less than the Minimum Revolving Balance.

(a) Revolving Loan Prepayments. (a) In the event of the termination of all the Revolving Commitments, Borrower shall, on the date of such termination, repay or prepay all its outstanding Revolving Borrowings and all outstanding Swingline Loans and either (A) replace all outstanding Letters of Credit or (B) cash collateralize all outstanding Letters of Credit in accordance with the procedures set forth in Section 2.18(j).

(i) In the event of any partial reduction of the Revolving Commitments, then (x) at or prior to the effective date of such reduction, the Administrative Agent shall notify Borrower and the Revolving Lenders of the sum of the Revolving Exposures after giving effect thereto and (y) if the sum of the Revolving Exposures would exceed the aggregate amount of Revolving Commitments after giving effect to such reduction, then Borrower shall on the date of such reduction (and notwithstanding that such reduction may be in breach of the requirement to maintain a Minimum Revolving Balance), *first*, repay or prepay Swingline Loans, *second*, repay or prepay Revolving Borrowings and *third*, replace outstanding Letters of Credit or cash collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.18(j), in an aggregate amount sufficient to eliminate such excess.

(ii) In the event that the sum of all Lenders' Revolving Exposures exceeds the Revolving Commitments then in effect, Borrower shall, without notice or demand, immediately *first*, repay or prepay Swingline Loans, *second*, repay or prepay Revolving Borrowings, and *third*, replace outstanding Letters of Credit or cash collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.18(j), in an aggregate amount sufficient to eliminate such excess.

(iii) In the event that the aggregate LC Exposure exceeds the LC Commitment then in effect, Borrower shall, without notice or demand, immediately replace outstanding Letters of Credit or cash collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.18(j), in an aggregate amount sufficient to eliminate such excess.

(iv) In the event that the sum of all Lenders' Revolving Exposures exceeds the Borrowing Base then in effect (based on the Borrowing Base Certificate last delivered), Borrower shall, without notice or demand, immediately *first*, repay or prepay Swingline Loans, *second*, repay or prepay Revolving Borrowings, and *third*, replace outstanding Letters of Credit or cash collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.18(i), in an aggregate amount sufficient to eliminate such excess.

(b) Application of Prepayments. Prior to any optional or mandatory prepayment hereunder, Borrower shall select the Class Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to Section 2.09(d), subject to the provisions of this Section 2.09(c).

(c) Notice of Prepayment. Borrower shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by written notice of any prepayment hereunder (i) not later than 11:00 a.m., New York City time, on the third Business Day before the date of prepayment, and (ii) in the case of prepayment of a Swingline Loan, not later than 11:00 a.m., New York City time, on the date of prepayment. Each such notice shall be irrevocable. Each such notice shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment. Promptly following receipt of any such notice (other than a notice relating solely to Swingline Loans), the Administrative Agent shall advise the Lenders of the contents thereof. Such notice to the Lenders may be by electronic communication. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of a Borrowing of the same Class as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing and otherwise in accordance with this Section 2.09. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.06.

Section 2.10 **[Intentionally Omitted].**

Section 2.11 **Alternate Rate of Interest**. If the Administrative Agent, in good faith and in its reasonable discretion, shall determine that for any reason in connection with any request for a Loan that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount of such Loan, (b) adequate and reasonable means do not exist for determining the Adjusted LIBOR Rate with respect to a proposed Loan, or (c) the Adjusted LIBOR Rate for any requested Loan or in connection with a Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan as a result of events occurring after the Restatement Date, the Administrative Agent will promptly so notify Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Loans as to which the interest rate is determined with reference to the Adjusted LIBOR Rate shall be suspended until the Administrative Agent revokes such notice and during such period Loans based on the Alternate Base Rate shall be made and continued based on the interest rate determined by the greater of clauses (a) and (b) in the definition of Alternate Base Rate. Upon receipt of such notice, Borrower may revoke any pending request for a Borrowing of Loans (without penalty) or, failing that, will be deemed to have converted such request into a request for a Borrowing based on the Alternate Base Rate in the amount specified therein.

Section 2.12 **Increased Costs; Change in Legality**. (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against property of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBOR Rate) or the Issuing Lender; or

(ii) impose on any Lender or the Issuing Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender, the Issuing Lender or such Lender's or the Issuing Lender's holding company, if any, of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or the Issuing Lender hereunder (whether of principal, interest or otherwise), as determined by such Lender or the Issuing Lender, in good faith, in its reasonable discretion, then Borrower will pay to such Lender or the Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Lender, as the case may be, for such additional costs incurred or reduction suffered provided that the foregoing shall not apply to any such costs incurred more than 365 days prior to the date on which Borrower receives a certificate in regard thereto, as provided in subsection (c) below; it being understood that, to the extent duplicative of the provisions of Section 2.15, this Section 2.12 shall not apply to Taxes. The protection of this Section 2.12 shall be available to each Lender and the Issuing Lender regardless of any possible contention of the invalidity or inapplicability of the Change in Law that shall have occurred or been imposed.

(b) If any Lender or the Issuing Lender determines (in good faith in its reasonable absolute discretion) that any Change in Law regarding Capital Requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Lender's capital or on the capital of such Lender's or the Issuing Lender's holding company, if any, as a consequence of this Agreement, the Commitment of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by such Lender, or the Letters of Credit issued by the Issuing Lender, to a level below that which such Lender or the Issuing Lender or such Lender's or the Issuing Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Lender's policies and the policies of such Lender's or the Issuing Lender's holding company with respect to capital adequacy), then from time to time Borrower will pay to such Lender or the Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Lender or such Lender's or the Issuing Lender's holding company, for any such reduction suffered; *provided* that the foregoing shall not apply to any such costs incurred more than 365 days prior to the date on which Borrower receives a certificate in regard thereto, as provided in subsection (c) below.

(c) A certificate of a Lender or the Issuing Lender setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or the Issuing Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section 2.12 shall be delivered to Borrower (with a copy to the Administrative Agent) and shall be conclusive and binding absent manifest error. Borrower shall pay such Lender or the Issuing Lender, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Lender to demand compensation pursuant to this Section 2.12 shall not constitute a waiver of such Lender's or the Issuing Lender's right to demand such compensation, except as otherwise expressly provided in subsection (a) and (b) above.

(e) If any Lender determines in good faith in its reasonable discretion that any Change in Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender to make, maintain or fund Loans based on the Adjusted LIBOR Rate, or to determine or charge interest rates based upon the Adjusted LIBOR Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to Borrower through the Administrative Agent, any obligation of such Lender to make or continue Loans based on the Adjusted LIBOR Rate or, if such

notice relates to the unlawfulness or asserted unlawfulness of charging interest based on the Adjusted LIBOR Rate, to make Loans as to which the interest rate is determined with reference to the Adjusted LIBOR Rate shall be suspended until such Lender notifies the Administrative Agent and Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, Borrower shall, within one Business Day after demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Loans based on the Adjusted LIBOR Rate of such Lender to Loans based on the Alternate Base Rate, if such Lender may lawfully continue to maintain such Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Loans as to which the interest rate is determined with reference to the Adjusted LIBOR Rate. Notwithstanding the foregoing and despite the illegality for such a Lender to make, maintain or fund Loans as to which the interest rate is determined with reference to the Adjusted LIBOR Rate, that Lender shall remain committed to make Loans as to which the rate of interest is not determined with reference to the Adjusted LIBOR Rate and shall be entitled to recover interest at such Alternate Base Rate. Upon any such prepayment or conversion, Borrower shall also pay accrued interest on the amount so prepaid or converted.

Section 2.13 **[Intentionally Omitted]**.

Section 2.14 **Payments Generally; Pro Rata Treatment; Sharing of Setoffs**. (a) Borrower shall make each payment required to be made by it hereunder or under any other Loan Document (whether of principal, interest, fees or Reimbursement Obligations, or of amounts payable hereunder) on or before the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 2:00 p.m., New York City time), on the date when due, in immediately available funds, without setoff, deduction or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 199 Water Street, 31st Floor, New York, NY 10038 Attn: BioScrip Account Manager, except payments to be made directly to the Issuing Lender or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.12, 2.15 and 11.03 shall be made directly to the persons entitled thereto and payments pursuant to other Loan Documents shall be made to the persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, unless specified otherwise, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under each Loan Document shall be made in Dollars.

(a) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, Reimbursement Obligations, interest and fees then due hereunder, such funds shall be applied (i) *first*, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) *second*, towards payment of principal and Reimbursement Obligations then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and Reimbursement Obligations then due to such parties.

(b) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise (including by exercise of its rights under the Security Agreement), obtain payment in respect of any principal of or interest on any of its Revolving Loans or participations in LC Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the

proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans and participations in LC Disbursements and Swingline Loans; *provided* that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Loans or participations in LC Disbursements or Swingline Loans to any assignee or participant, other than to any Company or any Affiliates (as to which the provisions of this paragraph shall apply). Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Legal Requirements, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation. If under applicable bankruptcy, insolvency or any similar law any Secured Party receives a secured claim in lieu of a setoff or counterclaim to which this Section 2.14(c) applies, such Secured Party shall to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights to which the Secured Party is entitled under this Section 2.14(c) to share in the benefits of the recovery of such secured claim.

(c) Unless the Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Lender hereunder that Borrower will not make such payment, the Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if Borrower has not in fact made such payment, then each of the Lenders or the Issuing Lender, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the Issuing Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules or practices on interbank compensation.

(d) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.02(c), 2.14(d), 2.17(d), 2.18(d), 2.18(e) or 11.03(e), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

Section 2.15 **Taxes**. (a) Any and all payments by or on account of any obligation of Borrower hereunder or under any other Loan Document shall be made without setoff, counterclaim or other defense and free and clear of and without deduction or withholding for any and all Indemnified Taxes or Other Taxes; *provided* that if Borrower shall be required by applicable Legal Requirements to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions or withholdings applicable to additional sums payable under this Section 2.15) the Administrative Agent, any Lender or the Issuing Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) Borrower shall make such deductions or withholdings and (iii) Borrower shall timely pay

the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Legal Requirements.

(a) In addition, Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Legal Requirements.

(b) Borrower shall indemnify the Administrative Agent, each Lender and the Issuing Lender, within 10 Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent, such Lender or the Issuing Lender, as the case may be, on or with respect to any payment by or on account of any obligation of Borrower hereunder or under any other Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.15) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other 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 Borrower by a Lender or the Issuing Lender (in each case, with a copy delivered concurrently to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the Issuing Lender, shall be conclusive absent manifest error.

(c) As soon as practicable after any payment of Indemnified Taxes or Other Taxes and in any event within 30 days following any such payment being due, by Borrower to a Governmental Authority, Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent. If Borrower fails to pay any Indemnified Taxes or Other Taxes when due to the appropriate Governmental Authority or fails to remit to the Administrative Agent the required receipts or other documentary evidence, Borrower shall indemnify the Administrative Agent, each Lender and the Issuing Lender for any incremental Taxes or expenses that may become payable by the Administrative Agent, such Lender or the Issuing Lender, as the case may be, as a result of any such failure.

(d) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law or reasonably requested by Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. Without limiting the generality of the foregoing, each Foreign Lender shall (i) furnish on or prior to the date it becomes a party hereto, either (a) two accurate and completed originally executed U.S. Internal Revenue Service Form W-8BEN (or successor form), (b) two accurate and complete originally executed U.S. Internal Revenue Service Form W-8ECI (or successor form), or (c) two accurate and complete originally executed U.S. Internal Revenue Service Form W-8IMY (or successor form), together with any required schedules or attachments, certifying, in each case, to such Foreign Lender's legal entitlement to an exemption or reduction from U.S. federal withholding tax with respect to all interest payments hereunder, and (ii) to the extent it may lawfully do so at such times, provide a new Form W-8BEN (or successor form), Form W-8ECI (or successor form) or Form W-8IMY (or successor form) upon the expiration or obsolescence of any previously delivered form, or at any other time upon the reasonable request of Borrower or the Administrative Agent, to reconfirm any complete exemption from, or any entitlement to a reduction in, U.S. federal withholding tax with respect to any interest payment hereunder; *provided* that any Foreign Lender that is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code shall also furnish a "Non-Bank Certificate" in the form of Exhibit K if it is furnishing a Form W-8BEN. If requested by Borrower or the

Administrative Agent, each Foreign Lender shall (and shall cause other Persons acting on its behalf to) take any action (including entering into an agreement with the Internal Revenue Service) and comply with any information gathering and reporting requirements, in each case, that are required to obtain the maximum available exemption from U.S. federal withholding taxes under Title I of the Foreign Account Tax Compliance Act of 2009 (the "**Proposed Act**"), if enacted, or under any other enacted legislation that is substantially similar to Title I of the Proposed Act, with respect to payments received by or on behalf of such Foreign Lender, *provided* that, for the avoidance of doubt, a Foreign Lender's breach of this sentence shall affect the rights only of the breaching Foreign Lender, and not the rights of any other Foreign Lender, under Section 2.15(a).

(e) If the Administrative Agent or a Lender (or an assignee) determines in its reasonable discretion that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by Borrower or with respect to which Borrower has paid additional amounts pursuant to this Section 2.15, it shall pay over such refund to Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by Borrower under this Section 2.15 with respect to the Indemnified Taxes or the Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender (or assignee) and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided*, *however*, that if the Administrative Agent or such Lender (or assignee) is required to repay all or a portion of such refund to the relevant Governmental Authority, Borrower, upon the request of the Administrative Agent or such Lender (or assignee), shall repay the amount paid over to Borrower that is required to be repaid (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender (or assignee) within a reasonable time (not to exceed 20 days) after receipt of written notice that the Administrative Agent or such Lender (or assignee) is required to repay such refund (or a portion thereof) to such Governmental Authority. Nothing contained in this Section 2.15(f) shall require the Administrative Agent or any Lender (or assignee) to make available its Tax Returns or any other information which it deems confidential to Borrower or any other person. Notwithstanding anything to the contrary, in no event will the Administrative Agent or any Lender (or assignee) be required to pay any amount to Borrower the payment of which would place the Administrative Agent or such Lender (or assignee) in a less favorable net after-tax position than the Administrative Agent or such Lender (or assignee) would have been in if the additional amounts giving rise to such refund of any Indemnified Taxes or Other Taxes had never been paid.

Section 2.16 **Mitigation Obligations; Replacement of Lenders**. (a) Mitigation of Obligations. If any Lender requests compensation under Section 2.12(a) or (b), or if Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce materially amounts payable pursuant to Section 2.12(a), 2.12(b), or 2.15, as the case may be, in the future, (ii) would not subject such Lender to any unreimbursed cost or expense, (iii) would not require such Lender to take any action materially inconsistent with its internal policies or legal or regulatory restrictions, and (iv) would not otherwise be materially disadvantageous to such Lender. Borrower shall pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment. A certificate setting forth such costs and expenses in reasonable detail submitted by such Lender to the Administrative Agent shall be conclusive absent manifest error.

(a) Replacement of Lenders. In the event (i) any Lender or the Issuing Lender delivers a certificate requesting compensation pursuant to Section 2.12(a) or (b), (ii) any Lender or the Issuing Lender delivers a notice described in Section 2.12(e), (iii) Borrower is required to pay any additional amount to any

Lender or the Issuing Lender or any Governmental Authority on account of any Lender or the Issuing Lender pursuant to Section 2.15, (iv) any Lender refuses to consent to any amendment, waiver or other modification of any Loan Document requested by Borrower that requires the consent of 100% of the Lenders and the Required Lenders have granted consent, or (v) any Lender or the Issuing Lender defaults in its obligations to make Loans or issue Letters of Credit, as the case may be, or other extensions of credit hereunder, Borrower may, at its sole expense and effort (including with respect to the processing and recordation fee referred to in Section 11.04(b)), upon notice to such Lender or the Issuing Lender and the Administrative Agent, require such Lender or the Issuing Lender to transfer and assign, without recourse (in accordance with and subject to the restrictions contained in Section 11.04), all of its interests, rights and obligations under this Agreement to an assignee which shall assume such assigned obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (w) no Default shall have occurred and be continuing, (x) such assignment shall not conflict with any applicable Legal Requirement, (y) Borrower shall have received the prior written consent of the Administrative Agent (and, if a Revolving Commitment is being assigned, the prior written consent of the Issuing Lender and the Swingline Lender), which consent shall not unreasonably be withheld or delayed, and (z) Borrower or such assignee shall have paid to the affected Lender or the Issuing Lender in immediately available funds an amount equal to the sum of the principal of and interest and any prepayment premium or penalty (if any) accrued to the date of such payment on the outstanding Loans or LC Disbursements of such Lender or the Issuing Lender, respectively, affected by such assignment plus all Fees and other amounts owing to or accrued for the account of such Lender or such Issuing Lender hereunder (including any amounts under Section 2.12) *plus*, solely in connection with the transfer and assignment by the Issuing Lender of its interests, rights and obligations under this Section 2.16(b), for the account of the Issuing Lender, a share of each LC Disbursement and as cash collateral and cash collateral, in an amount up to 105% of the LC Exposure; *provided further* that, if prior to any such transfer and assignment the circumstances or event that resulted in such Lender's or the Issuing Lender's claim for compensation under Section 2.12(a) or (b) or notice under Section 2.12(e) or the amounts paid pursuant to Section 2.15 , as the case may be, cease to cause such Lender or the Issuing Lender to suffer increased costs or reductions in amounts received or receivable or reduction in return on capital, or cease to have the consequences specified in Section 2.12(e), or cease to result in amounts being payable under Section 2.15, as the case may be (including as a result of any action taken by such Lender or the Issuing Lender pursuant to paragraph (a) of this Section 2.16), or if such Lender or the Issuing Lender shall waive its right to claim further compensation under Section 2.12(a) or (b) in respect of such circumstances or event or shall withdraw its notice under Section 2.12(e) or shall waive its right to further payments under Section 2.15 in respect of such circumstances or event or shall consent to the proposed amendment, waiver, consent or other modification, as the case may be, then such Lender or the Issuing Lender shall not thereafter be required to make any such transfer and assignment hereunder. Each Lender and the Issuing Lender hereby irrevocably authorizes the Administrative Agent to execute and deliver, on behalf of such Lender and the Issuing Lender as assignor, any Assignment and Acceptance necessary to effectuate any assignment of such Lender's or the Issuing Lender's interests hereunder in the circumstances contemplated by this Section 2.216(b).

(b) Defaulting Lenders. Anything contained herein to the contrary notwithstanding, in the event that any Lender becomes a Defaulting Lender, then (i) during any Default Period (as defined below) with respect to such Defaulting Lender, such Defaulting Lender shall be deemed not to be a "Lender", and the amount of such Defaulting Lender's Revolving Commitment and Revolving Loans shall be excluded for purposes of voting, and the calculation of voting, on any matters (including the granting of any consents or waivers) with respect to any of the Loan Documents; (ii) to the extent permitted by applicable Legal Requirements, until such time as the Default Excess (as defined below) with respect to such Defaulting Lender shall have been reduced to zero, (A) any voluntary prepayment of the Loans pursuant to Section 2.09(a) shall, if Borrower so directs at the time of making such voluntary prepayment, be applied to the Loans of other Lenders in accordance with Section 2.09(a) as if such Defaulting Lender had no Loans outstanding

and the Revolving Exposure of such Defaulting Lender were zero, and (B) any mandatory prepayment of the Loans pursuant to Section 2.09 shall, if Borrower so directs at the time of making such mandatory prepayment, be applied to the Loans of other Lenders (but not to the Loans of such Defaulting Lender) in accordance with Section 2.09 as if such Defaulting Lender had funded all Defaulted Revolving Loans of such Defaulting Lender, it being understood and agreed that borrower shall be entitled to retain any portion of any mandatory prepayment of the Loans that is not paid to such Defaulting Lender solely as a result of the operation of the provisions of this clause (B); (iii) the amount of such Defaulting Lender's Revolving Commitment, Revolving Loans and LC Exposure shall be excluded for purposes of calculating the commitment fee payable to Revolving Lenders pursuant to Section 2.05(a) in respect of any day during any Default Period with respect to such Defaulting Lender, and such Defaulting Lender shall not be entitled to receive any commitment fee pursuant to Section 2.05(a) with respect to such Defaulting Lender's Revolving Commitment in respect of any Default Period with respect to such Defaulting Lender; (iv) if any Swingline Exposure or LC Exposure exists at the time a Lender becomes a Defaulting Lender then: (A) all or any part of such Swingline Exposure and LC Exposure shall be reallocated among the Revolving Lenders that are not Defaulting Lenders in accordance with their respective Revolving Commitments but, in any case, only to the extent (x) the sum of the Revolving Exposures of all Revolving Lenders that are not Defaulting Lenders does not exceed the total of the Revolving Commitments of all Revolving Lenders that are not Defaulting Lenders and (y) the conditions set forth in Section 4.02 are satisfied at such time; (B) if the reallocation described in clause (A) above cannot, or can only partially, be effected, Borrower shall within one Business Day following notice by the Administrative Agent (x) prepay such Swingline Exposure of such Defaulting Lender and (y) cash collateralize such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (A) above) in accordance with the procedures set forth in Section 2.18(i) for so long as such LC Exposure is outstanding; (C) if Borrower cash collateralizes any portion of such Defaulting Lender's LC Exposure pursuant to this paragraph (iv), Borrower shall not be required to pay any LC Participation Fee to such Defaulting Lender pursuant to Section 2.05(c) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized; (D) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to this paragraph (iv), then the fees payable to the Lenders pursuant to Section 2.05 shall be adjusted in accordance with such non-Defaulting Lenders' reallocated LC Exposure; and (E) if any Defaulting Lender's LC Exposure is neither cash collateralized nor reallocated pursuant to this paragraph (iv), then, without prejudice to any rights or remedies of the Issuing Lenders or any Lender hereunder, all commitment fees that otherwise would have been payable to such Defaulting Lender (solely with respect to the portion of such Defaulting Lender's Commitment that was utilized by such LC Exposure) and LC Participation Fee payable under Section 2.05 with respect to such Defaulting Lender's LC Exposure shall be payable to the applicable Issuing Lenders until such LC Exposure is cash collateralized and/or reallocated; (v) the Revolving Exposure of all Lenders as at any date of determination shall be calculated as if such Defaulting Lender had funded all Defaulted Revolving Loans of such Defaulting Lender; and (vi) so long as any Lender is a Defaulting Lender, the Swingline Lender shall not be required to fund any Swingline Loan and no Issuing Lender shall be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by Borrower in accordance with paragraph (iv) of this Section 2.16(c), and participating interests in any such newly issued or increased Letter of Credit or newly made Swingline Loan shall be allocated among non-Defaulting Lenders in a manner consistent with paragraph (iv)(A) of this Section 2.16(c) (and Defaulting Lenders shall not participate therein). In the event that each of the Administrative Agent, Borrower, the Issuing Lenders and the Swingline Lender agree that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Swingline Exposure, LC Exposure and Revolving Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Commitment and on such date such Lender shall purchase at par such of the Loans of the other Lenders (other than Swingline Loans) as the

Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Revolving Commitment.

For purposes of this Agreement, (i) "**Funding Default**" means, with respect to any Defaulting Lender, the occurrence of any of the events set forth in the definition of "Defaulting Lender," (ii) "**Default Period**" means, with respect to any Defaulting Lender, the period commencing on the date of the applicable Funding Default and ending on the earliest of the following dates: (a) the date on which all Commitments are cancelled or terminated and/or the Obligations are declared or become immediately due and payable, (b) with respect any Funding Default (other than any such Funding Default arising pursuant to clause (e) of the definition of "Defaulting Lender"), the date on which (1) the Default Excess with respect to such Defaulting Lender shall have been reduced to zero (whether by the funding by such Defaulting Lender of all payments resulting in such Funding Default of such Defaulting Lender or by the non-pro rata application of any voluntary or mandatory prepayments of the Loans in accordance with the terms hereof or any combination thereof) and (2) such Defaulting Lender shall have delivered to Borrower and the Administrative Agent a written reaffirmation of its intention to honor its obligations under this Agreement with respect to its Commitment(s), and (c) the date on which Borrower, the Administrative Agent and the Required Lenders waive all Funding Defaults of such Defaulting Lender in writing, and (iii) "**Default Excess**" shall mean, with respect to any Defaulting Lender, the excess, if any, of such Defaulting Lender's pro rata percentage of the aggregate outstanding principal amount of Loans of all Lenders (calculated as if all Defaulting Lenders (including such Defaulting Lender) had funded all of their respective payments which resulted in such Lender being a Defaulting Lender) over the aggregate outstanding principal amount of Loans of such Defaulting Lender.

No amount of the Commitment of any Lender shall be increased or otherwise affected, and, except as otherwise expressly provided in Section 2.16(c), performance by Borrower of its obligations under this Agreement and the other Loan Documents shall not be excused or otherwise modified, as a result of any Funding Default or the operation of Section 2.16(c). The rights and remedies against a Defaulting Lender under Section 2.16(c) are in addition to other rights and remedies that Borrower may have against such Defaulting Lender with respect to any Funding Default and that the Administrative Agent or any Lender may have against such Defaulting Lender with respect to any Funding Default.

Section 2.17 **Swingline Loans**. (a) Swingline Commitment. Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans to Borrower from time to time on any Business Day during the Revolving Availability Period, in an aggregate principal amount at any time outstanding that will not result in (and upon each such Borrowing of Swingline Loans, Borrower shall be deemed to represent and warrant that such Borrowing will not result in) (i) the aggregate principal amount of outstanding Swingline Loans exceeding the Swingline Commitment, (ii) the sum of the total Revolving Exposures exceeding the total Revolving Commitments or (iii) the Revolving Exposure for all Lenders exceeding the Borrowing Base; *provided* that the Swingline Lender shall not be required to make a Swingline Loan to refinance, in whole or in part, an outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, Borrower may borrow, repay and reborrow Swingline Loans.

(a) Swingline Loans. To request a Swingline Loan, Borrower shall deliver, by hand delivery or facsimile transmission (or transmit by other electronic transmission if arrangements for doing so have been approved in writing by the Administrative Agent), a duly completed and executed Borrowing Request to the Administrative Agent and the Swingline Lender, not later than 10:00 a.m., New York City time, on the Business Day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and the amount of the requested Swingline Loan.

Each Swingline Loan shall accrue interest based on the Adjusted LIBOR Rate. The Swingline Lender shall make each Swingline Loan available to Borrower by means of a credit to the Borrower Account by the Swingline Lender (or, in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in Section 2.18(e), by remittance to the Issuing Lender). The Swingline Lender shall endeavor to fund each Swingline Loan by 3:00 p.m., New York City time and shall in all events fund each Swingline Loan by no later than 5:00 p.m., New York City time, on the requested date of such Swingline Loan. Borrower shall not request a Swingline Loan if at the time of or immediately after giving effect to the Credit Extension contemplated by such request a Default has occurred and is continuing or would result therefrom. Swingline Loans shall be made in minimum amounts of $100,000 and integral multiples of $50,000 above such amount.

(b) Prepayment. Borrower shall have the right at any time and from time to time to repay any Swingline Loan, in whole or in part, upon giving written notice to the Swingline Lender and the Administrative Agent before 12:00 p.m., New York City time, on the proposed date of repayment; *provided* that Borrower shall repay each Swingline Loan (whether through proceeds of a Revolving Loan or otherwise) on or prior to the fifth Business Day following the initial advance of the Swingline Lender with respect thereto.

(c) Participations. The Swingline Lender (i) may at any time in its discretion, and (ii) no less frequently than every five Business Days or as directed by the Administrative Agent from time to time on not less than one Business Day's written notice to the Swingline Lender, shall by written notice given to the Administrative Agent (*provided* such notice requirements shall not apply if the Swingline Lender and the Administrative Agent are the same entity) not later than 11:00 a.m., New York City time, on the next succeeding Business Day following such notice require the Revolving Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans then outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which Revolving Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Revolving Lender, specifying in such notice such Lender's Pro Rata Percentage of such Swingline Loan or Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Pro Rata Percentage of such Swingline Loan or Loans. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default, a reduction or termination of the Commitments or a Borrowing Base Deficiency, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever (so long as such payment shall not cause such Lender's Revolving Exposure to exceed such Lender's Revolving Commitment). Each Revolving Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.02(c) with respect to Loans made by such Lender (and Section 2.02 shall apply, *mutatis mutandis*, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Revolving Lenders; *provided*, that the Revolving Lender who is the Swingline Lender shall be deemed to have funded its Pro Rata Percentage automatically without further funding. The Administrative Agent shall notify Borrower of any participations in any Swingline Loan acquired by the Revolving Lenders pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from Borrower (or other party on behalf of Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent. Any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Revolving Lenders that shall have made their payments pursuant to this

paragraph, as their interests may appear. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve Borrower of any default in the payment thereof.

(d) Resignation or Removal of the Swingline Lender. The Swingline Lender may resign as Swingline Lender hereunder at any time upon at least 30 days' prior written notice to the Lenders, the Administrative Agent and Borrower, provided that such Swingline Lender is replaced by a successor Swingline Lender simultaneously with its resignation. Following such notice of resignation from the Swingline Lender, the Swingline Lender may be replaced at any time by written agreement among Borrower (with Borrower's agreement not to be unreasonably withheld, delayed or conditioned), the Administrative Agent, the replaced Swingline Lender and the successor Swingline Lender. The Administrative Agent shall notify the Lenders of any such replacement of the Swingline Lender. At the time any such resignation or replacement shall become effective, Borrower shall pay all unpaid fees accrued for the account of the replaced Swingline Lender. From and after the effective date of any such resignation or replacement, (i) the successor Swingline Lender shall have all the rights and obligations of the Swingline Lender under this Agreement with respect to Swingline Loans to be made by it thereafter and (ii) references herein and in the other Loan Documents to the term "Swingline Lender" shall be deemed to refer to such successor or to any previous Swingline Lenders, or to such successor and all previous Swingline Lenders, as the context shall require. After the resignation or replacement of the Swingline Lender hereunder, the replaced Swingline Lender shall remain a party hereto and shall continue to have all the rights and obligations of the Swingline Lender under this Agreement with respect to Swingline Loans made by it prior to such resignation or replacement, but shall not be required to make additional Swingline Loans. Notwithstanding anything to the contrary in this Section 2.17(e) or otherwise, the Swingline Lender may not resign until such time as a successor Swingline Lender has been appointed.

Section 2.18 **Letters of Credit**. (a) General. Subject to the terms and conditions set forth herein, Borrower may request the Administrative Agent, and the Administrative Agent agrees to cause the Issuing Lender to issue, or to cause an Underlying Issuer (including, as Issuing Lender's agent) to issue Letters of Credit for its own account or the account of a Subsidiary in a form reasonably acceptable to Borrower (with Borrower's agreement not to be unreasonably withheld, delayed or conditioned), the Administrative Agent and the Issuing Lender, at any time and from time to time during the Revolving Availability Period (*provided* that Borrower shall be a co-applicant, and be jointly and severally liable, with respect to each Letter of Credit issued for the account of a Subsidiary). If Issuing Lender, at its option, elects to cause an Underlying Issuer to issue a requested Letter of Credit, then Issuing Lender may enter into arrangements relative to the reimbursement of such Underlying Issuer with respect to such Letter of Credit or entering into undertakings which provide for reimbursements of such Underlying Issuer with respect to such Letter of Credit (each such obligation or undertaking, irrespective of whether in writing, a "Reimbursement Undertaking"). By submitting a request to Issuing Lender for the issuance of a Letter of Credit, Borrowers shall be deemed to have requested that Issuing Lender issue or that an Underlying Issuer issue the requested Letter of Credit and to have requested Issuing Lender to issue a Reimbursement Undertaking with respect to such requested Letter of Credit if it is to be issued by an Underlying Issuer (it being expressly acknowledged and agreed by each Borrower that Borrowers are and shall be deemed to be applicants (within the meaning of Section 5-102(a)(2) of the Code) with respect to each Underlying Letter of Credit). Anything contained herein to the contrary notwithstanding, the Issuing Lender may, but shall not be obligated to, issue or cause the issuance of a Letter of Credit or to issue a Reimbursement Undertaking in respect of an Underlying Letter of Credit, in either case, that supports the obligations of Borrower in respect of (A) a lease of real property, or (B) an employment contract. Neither the Administrative Agent nor Issuing Lender shall have any obligation to cause the issuance, or have the Underlying Issuer issue, and Borrower shall not request the issuance of, any Letter of Credit at any time if after giving effect to such issuance, (w) the LC Exposure would exceed the LC Commitment, (x) the total Revolving Exposure would exceed the total Revolving Commitments, (y) the

Revolving Exposure for all Lenders would then exceed the Borrowing Base, or (z) the expiry date of the proposed Letter of Credit is on or after than the close of business on the Letter of Credit Expiration Date.

(a) Request for Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit or the amendment, renewal or extension of an outstanding Letter of Credit, Borrower shall hand deliver, facsimile transmission or transmit by electronic communication an LC Request to the Administrative Agent not later than 11:00 a.m., New York City time, on the third Business Day preceding the requested date of issuance, amendment, renewal or extension (or such later date and time as is acceptable to the Issuing Lender). Each such request for an initial issuance of a Letter of Credit shall specify in form and detail reasonably satisfactory to the Issuing Lender).

A request for an initial issuance of a Letter of Credit shall specify, in form and detail reasonably satisfactory to the Issuing Lender, the following:

(i) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day);

(ii) the face amount thereof;

(iii) the expiry date thereof (which shall not be later than the close of business on the Letter of Credit Expiration Date);

(iv) the name and address of the beneficiary thereof;

(v) whether the Letter of Credit is to be issued for its own account or for the account of one of its Subsidiaries (*provided* that Borrower shall be a co-applicant, and be jointly and severally liable, with respect to each Letter of Credit issued for the account of a Subsidiary);

(vi) whether the Letter of Credit is to be issued as a Standby Letter of Credit or a Commercial Letter of Credit;

(vii) the documents to be presented by such beneficiary in connection with any drawing thereunder;

(viii) the full text of any certificate to be presented by such beneficiary in connection with any drawing thereunder; and

(ix) such other matters as the Issuing Lender may require.

A request for an amendment, renewal or extension of any outstanding Letter of Credit shall specify in form and detail reasonably satisfactory to the Issuing Lender:

(i) the Letter of Credit to be amended, renewed or extended;

(ii) the proposed date of amendment, renewal or extension thereof (which shall be a Business Day);

(iii) the expiry date thereof (which shall not be later than the close of business on the Letter of Credit Expiration Date);

(iv) the nature of the proposed amendment, renewal or extension; and

(v) such other matters as the Issuing Lender may require.]

If requested by the Issuing Lender, Borrower also shall submit a letter of credit application on the Issuing Lender's standard form in connection with any request for a Letter of Credit. Neither the Administrative Agent nor Issuing Lender shall have any obligation to cause the issuance, or have the Underlying Issuer issue, and Borrower shall not request the issuance of, any Letter of Credit at any time if after giving effect to such issuance, (w) the LC Exposure would exceed the LC Commitment, (x) the total Revolving Exposure would exceed the total Revolving Commitments, (y) the Revolving Exposure for all Lenders would then exceed the Borrowing Base, or (z) the expiry date of the proposed Letter of Credit is on or after than the close of business on the Letter of Credit Expiration Date. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by Borrower to, or entered into by Borrower with, the Issuing Lender relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(b) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (x) the date which is one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (y) the Letter of Credit Expiration Date; *provided* that this paragraph (c) shall not prevent any Issuing Lender from agreeing that a Letter of Credit will automatically be extended for one or more successive periods not to exceed one year each (and, in any case, not to extend beyond the Letter of Credit Expiration Date) unless each such Issuing Lender elects not to extend for any such additional period.

(c) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Lender, the Underlying Issuer or the Lenders, the Issuing Lender hereby irrevocably grants to each Revolving Lender, and each Revolving Lender hereby acquires from the Issuing Lender, a participation in such Letter of Credit or Reimbursement Undertaking equal to such Revolving Lender's Pro Rata Percentage of the aggregate amount available to be drawn under such Letter of Credit or Reimbursement Undertaking. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Lender or Underlying Issuer, such Revolving Lender's Pro Rata Percentage of each LC Disbursement made by the Issuing Lender or Underlying Issuer and not reimbursed by Borrower on the date due as provided in Section 2.18(e), or of any reimbursement payment required to be refunded to Borrower for any reason. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit or Reimbursement Undertakings is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments or a Borrowing Base Deficiency and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever (so long as such payment shall not cause such Lender's Revolving Exposure to exceed such Lender's Revolving Commitment).

(d) Reimbursement. (i) If the Issuing Lender shall make any LC Disbursement in respect of a Letter of Credit or an Underlying Issuer makes a payment under an Underlying Letter of Credit, Borrower shall reimburse such LC Disbursement by paying to the Issuing Lender an amount equal to such LC Disbursement not later than 2:00 p.m., New York City time, on the Business Day immediately following the date that such LC Disbursement is made if Borrower shall have received notice of such LC Disbursement prior to 11:00 a.m., New York City time, on such date, or, if such notice has not been received by Borrower

prior to such time on such date, then not later than 2:00 p.m., New York City time, on the second Business Day immediately following the day that Borrower receives such notice; *provided* that Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with Revolving Loans in an equivalent amount and, to the extent so financed, Borrower's obligation to make such payment shall be discharged and replaced by the resulting Revolving Loans.

(i) If Borrower fails to make such payment when due, and if the amount is not financed pursuant to the proviso to Section 2.18(e), the Issuing Lender shall notify the Administrative Agent and the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the payment then due from Borrower in respect thereof and such Revolving Lender's Pro Rata Percentage thereof. Each Revolving Lender shall pay by wire transfer of immediately available funds to the Administrative Agent not later than 12:00 p.m., New York City time, on such date (or, if such Revolving Lender shall have received such notice later than 11:00 a.m., New York City time, on any day, not later than 11:00 a.m., New York City time, on the immediately following Business Day), an amount equal to such Revolving Lender's Pro Rata Percentage of the unreimbursed LC Disbursement in the same manner as provided in Section 2.02(c) with respect to Revolving Loans made by such Revolving Lender, and the Administrative Agent will promptly pay to the Issuing Lender the amounts so received by it from the Revolving Lenders; *provided*, that if the Issuing Lender is also a Revolving Lender, such Revolving Lender shall be deemed to have funded its Pro Rata Percentage automatically without further funding. The Administrative Agent will promptly pay to the Issuing Lender any amounts received by it from Borrower pursuant to the above paragraph prior to the time that any Revolving Lender makes any payment pursuant to the preceding sentence and any such amounts received by the Administrative Agent from Borrower thereafter will be promptly remitted by the Administrative Agent to the Revolving Lenders that shall have made such payments and to the Issuing Lender, as appropriate.

(ii) If any Revolving Lender shall not have made its Pro Rata Percentage of such LC Disbursement available to the Administrative Agent as provided above, each of Borrower and such Revolving Lender severally agrees to pay interest on such amount, for each day from and including the date such amount is required to be paid in accordance with the foregoing to but excluding the date such amount is paid, to the Administrative Agent for the account of the Issuing Lender at (a) in the case of Borrower, the Default Rate and (b) in the case of such Lender, (x) for the first 3 days from after the date the relevant payment is due, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules or practices on interbank compensation, and (y) thereafter, the Base Rate plus the Applicable Margin.

(e) Obligations Absolute. The Reimbursement Obligation of Borrower as provided in Section 2.18(e) shall be absolute, unconditional and irrevocable, and shall be paid and performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein; (ii) any draft or other document presented under a Letter of Credit being proved to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; (iii) payment by the Issuing Lender under a Letter of Credit or payment by the Underlying Issuer under an Underlying Letter of Creditor against presentation of a draft or other document that fails to strictly comply with the terms of such Letter of Credit; (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the obligations of Borrower hereunder; (v) the fact that a Default shall have occurred and be continuing; (vi) any material adverse change in the condition (financial or otherwise), results of operations, assets, liabilities (contingent or otherwise), material

agreements, properties, solvency, business, management, prospects or value of any Company; or (vii) any other fact, circumstance or event whatsoever. None of the Agents, the Lenders, the Issuing Lender, the Underlying Issuer or any of their Affiliates shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Lender or the Underlying Issuer; *provided* that the foregoing shall not be construed to excuse the Issuing Lender or the Underlying Issuer from liability to Borrower to the extent of any direct damages (as opposed to consequential, special, punitive or other indirect damages, claims in respect of which are hereby waived by Borrower to the extent permitted by applicable Legal Requirements) suffered by Borrower that are caused by the Issuing Lender's failure or the Underlying Issuer's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Issuing Lender or Underlying Issuer (as finally determined by a court of competent jurisdiction), the Issuing Lender or the Underlying Issuer, as applicable, shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Lender or the Underlying Issuer may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(f) Disbursement Procedures. The Issuing Lender shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Lender shall promptly give written notice to the Administrative Agent and Borrower of such demand for payment and whether the Issuing Lender has made or will make, or has caused or will cause the Underlying Issuer to make, an LC Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve Borrower of its Reimbursement Obligation to the Issuing Lender, the Underlying Issuer and the Revolving Lenders, as applicable, with respect to any such LC Disbursement (other than with respect to the timing of such Reimbursement Obligation set forth in Section 2.18(e).

(g) Authorization to Underlying Issuer. Borrower hereby authorizes and directs any Underlying Issuer to deliver to the Issuing Lender all instruments, documents, and other writings and property received by such Underlying Issuer pursuant to such Underlying Letter of Credit and to accept and rely upon the Issuing Lender's instructions with respect to all matters arising in connection with such Underlying Letter of Credit and the related application.

(h) Interim Interest. If the Issuing Lender shall make any LC Disbursement, then, unless Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest payable on demand, for each day from and including the date such LC Disbursement is made to but excluding the date that Borrower reimburses such LC Disbursement, at the Alternate Base Rate plus the Applicable Margin for a period of three calendar days from the date of such LC Disbursement, and at the Default Rate thereafter. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Lender, or Underlying Issuer except that interest accrued on and after the date of payment by any Revolving Lender pursuant to Section 2.18(e) to reimburse the Issuing Lender or Underlying Issuer shall be for the account of such Lender to the extent of such payment.

(i) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Revolving Lenders with LC Exposure representing greater than 50% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, Borrower shall deposit in the LC Sub-Account, in the name of the Collateral Agent and for the benefit of the Revolving Lenders, an amount in cash equal to 105% of the LC Exposure as of such date plus any accrued and unpaid interest thereon; *provided* that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to Borrower described in paragraph (g) or (h) of Section 8.01. Funds in the LC Sub-Account shall be applied by the Collateral Agent to reimburse the Issuing Lender or Underlying Issuer for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of outstanding Reimbursement Obligations or, if the maturity of the Loans has been accelerated (but subject to the consent of Revolving Lenders with LC Exposure representing greater than 50% of the total LC Exposure), be applied to satisfy other Obligations of Borrower in accordance with Article IX.. If Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount *plus* any accrued interest or realized profits with respect to such amounts (to the extent not applied as aforesaid) shall be returned to Borrower within five Business Days after any cure or waiver thereof.

(j) Additional Issuing Lenders. The Administrative Agent may, at any time and from time to time, designate one or more additional Revolving Lenders to act as an Issuing Lender under the terms of this Agreement, with the consent of Borrower (which consent shall not be unreasonably withheld). Any Revolving Lender designated as an Issuing Lender pursuant to this paragraph (j) shall be deemed (in addition to being a Revolving Lender) to be the Issuing Lender with respect to Letters of Credit issued or to be issued by such Revolving Lender, and all references herein and in the other Loan Documents to the term "Issuing Lender" shall, with respect to such Letters of Credit, be deemed to refer to such Revolving Lender in its capacity as Issuing Lender, as the context shall require.

(k) Resignation or Removal of the Issuing Lender. The Issuing Lender may resign as Issuing Lender hereunder at any time upon at least 30 days' prior written notice to the Lenders, the Administrative Agent and Borrower. The Issuing Lender may be replaced by written agreement executed among Borrower, the Administrative Agent, the replaced Issuing Lender and the successor Issuing Lender. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Lender or any such additional Issuing Lender. At the time any such resignation or replacement shall become effective, Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Lender pursuant to Section 2.05(d). From and after the effective date of any such resignation or replacement or addition, as applicable, (i) the successor or additional Issuing Lender shall have all the rights and obligations of the Issuing Lender under this Agreement with respect to Letters of Credit to be issued by it thereafter and (ii) references herein and in the other Loan Documents to the term "Issuing Lender" shall be deemed to refer to such successor or such addition or to any previous Issuing Lender, or to such successor or such addition and all previous Issuing Lenders, as the context shall require. After the resignation or replacement of an Issuing Lender hereunder, the replaced Issuing Lender shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Lender under this Agreement with respect to Letters of Credit issued by it prior to such resignation or replacement, but shall not be required to issue additional Letters of Credit. If at any time there is more than one Issuing Lender hereunder, Borrower may, in its discretion, select which Issuing Lender is to issue any particular Letter of Credit.

(l) Other. The Administrative Agent shall be under no obligation to arrange for an Issuing Lender to issue any Letter of Credit if:

(i) any Order of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Administrative Agent from arranging, Issuing Lender from issuing, or Issuing Lender to cause Underlying Issuer from issuing, such Letter of Credit or Reimbursement Undertaking, or any Legal Requirement applicable to the Issuing Lender or Underlying Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Lender or Underlying Issuer shall prohibit, or request that the Issuing Lender or Underlying Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Lender or Underlying Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Lender or the Underlying Issuer is not otherwise compensated hereunder) not in effect on the Restatement Date, or shall impose upon the Issuing Lender or the Underlying Issuer any unreimbursed loss, cost or expense which was not applicable on the Restatement Date and which the Issuing Lender or the Underlying Issuer in good faith deems material to it; or

(ii) the issuance of such Letter of Credit would violate one or more policies of general application of the Administrative Agent, the Issuing Lender or the Underlying Issuer.

The Issuing Lender shall be under no obligation to amend any Letter of Credit if (A) the Issuing Lender or Underlying Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Administrative Agent, the Collateral Agent, the Issuing Lender and each of the Lenders (with references to the Companies being references thereto after giving effect to the Restatement Transactions unless otherwise expressly stated) that:

Section 3.01 **Organization; Powers**. Each Company (a) is duly incorporated or organized and validly existing under the laws of the jurisdiction of its incorporation or organization, as the case may be, (b) has all requisite power and authority to carry on its business as now conducted and to own, lease and operate its property and (c) is registered, qualified and in good standing (to the extent such concept is applicable in the applicable jurisdiction) to do business in every jurisdiction where such qualification is required, except in such jurisdictions where the failure to so register, qualify or be in good standing could not reasonably be expected to result in a Material Adverse Effect. There is no existing default under any Organizational Document of any Company or any event which, with the giving of notice or passage of time or both, would constitute a default by any party thereunder.

Section 3.02 **Authorization; Enforceability**. The Transactions entered into by each Loan Party were, and the Restatement Transactions entered into by each Loan Party are, within such Loan Party's powers and have been duly authorized by all necessary corporate or other organizational action on the part of such Loan Party. This Agreement has been duly executed and delivered by each Loan Party and constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 3.03 **No Conflicts**. The Transactions and Restatement Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect, (ii) filings necessary to perfect or maintain the perfection or priority of the Liens created by the Security Documents and (iii) consents, approvals, registrations, filings, Permits or actions the failure of which to obtain or perform could not reasonably be expected to result in a Material Adverse Effect, (b) will not violate the Organizational Documents of any Company, (c) will not violate or result in a default or require any consent or approval under (x) any indenture, agreement, or other instrument binding upon any Company or its property or to which any Company or its property is subject, or give rise to a right thereunder to require any payment to be made by any Company, except for violations, defaults or the creation of such rights that could not reasonably be expected to result in a Material Adverse Effect or (y) any Organizational Document, (d) will not violate any material Legal Requirement in any material respect and (e) will not result in the creation or imposition of any Lien on any property of any Company, other than the Liens created by the Security Documents.

Section 3.04 **Financial Statements; Projections**. (a) All financial statements and all financial statements delivered pursuant to Sections 5.01(a), (b) and (c) have been prepared in accordance with GAAP consistently applied throughout the applicable period covered, respectively, thereby and present fairly the financial condition and results of operations and cash flows of Borrower as of the dates and for the periods to which they relate (subject to normal year-end audit adjustments and the absence of footnotes). Except as set forth in such financial statements, there are no liabilities of any Company of any kind, whether accrued, contingent, absolute, determined, determinable or otherwise, which could reasonably be expected to result in a Material Adverse Effect, and there is no existing condition, situation or set of circumstances which could reasonably be expected to result in such a liability.

(f) Borrower heretofore has delivered to the Lenders the consolidated balance sheets and related statements of income, stockholders' equity and cash flows of Borrower as of and for the fiscal quarters ended March 31, 2010, June 30, 2010 and September 30, 2010. Such financial statements (A) have been prepared in good faith by the Loan Parties, based upon (i) accounting principles consistent with the historical audited financial statements delivered pursuant to this Section 3.04(b) and (ii) the best information reasonably available to, or in the possession or control of, the Loan Parties as of the date of delivery thereof, (B) have been prepared in accordance with GAAP (subject to normal year-end audit adjustments and the absence of footnotes) consistently applied throughout the applicable period covered, respectively, thereby, and (C) present fairly the consolidated financial position and results of operations of Borrower as of such dates and for such periods.

(g) Borrower has heretofore delivered to the Lenders the forecasts of financial performance of Borrower and its Subsidiaries dated December 28, 2010 (the "**Projections**"). The Projections have been prepared in good faith by the Loan Parties and based upon (i) the assumptions stated therein (which assumptions are believed by the Loan Parties on the date hereof and the Closing Date to be reasonable), (ii) accounting principles consistent with the historical audited financial statements delivered pursuant to Section 3.04(a) consistently applied throughout the fiscal years covered thereby, and (iii) the best information reasonably available to, or in the possession or control of, the Loan Parties as of the dates of the Projections.

(h) Since September 30, 2009, there has been no event, change, circumstance or occurrence that has had or could reasonably be expected to result in a Material Adverse Effect.

Section 3.05 **Properties**. (a) Each Company has good title to, or valid leasehold interests in, all its property material to its business, free and clear of all Liens and irregularities, deficiencies and defects in

title except for Permitted Liens and minor irregularities, deficiencies and defects in title that do not, and could not reasonably be expected to, interfere in any material respect with its ability to conduct its business as currently conducted or to utilize such property for its intended purpose. The property of the Companies, taken as a whole, (i) is in good operating order, condition and repair (ordinary wear and tear excepted), and (ii) constitutes all the property which is required for the business and operations of the Companies as presently conducted.

(e) Schedule 3.05(b) contains a true and complete list of each ownership and leasehold interest in Real Property (including all modifications, amendments and supplements thereto with respect to leased Real Property) (i) owned by any Company as of the Restatement Date and describes the use and type of interest therein held by such Company and (ii) leased, subleased or otherwise occupied or utilized by any Company, as lessee, sublessee, franchisee or licensee, as of the Restatement Date and describes the use and type of interest therein held by such Company; and accurately and comprehensively designates which, among such properties, constitute Key Locations as of the Restatement Date. No Company is in default under any provision of any lease agreement to which it is a party with respect to a leasehold interest in Real Property, where such default could reasonably be expected to result in a Material Adverse Effect.

(f) No Company has received any notice of, nor has any knowledge of, the occurrence or pendency or contemplation of any Casualty Event affecting all or any portion of any Key Location where such Casualty Event could reasonably be expected to result in a Material Adverse Effect. No Mortgage encumbers improved Real Property that is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards within the meaning of the National Flood Insurance Act of 1968 unless flood insurance available under such Act has been obtained in accordance with Section 5.04.

(g) Each Company owns or has rights to use all of its property and all rights with respect to any of the foregoing used in, necessary for or material to each Company's business as currently conducted. The use by each Company of its property and all such rights with respect to the foregoing do not infringe on the rights of any person, other than any infringement that could not reasonably be expected to result in a Material Adverse Effect. No claim has been made and remains outstanding that any Company's use of any of its property does or may violate the rights of any third party that could reasonably be expected to result in a Material Adverse Effect. Each Key Location is zoned to permit the uses for which such Key Location is currently being used. The present uses of each Key Location and the current operations of each Company's business do not violate in any material respect any provision of any applicable building codes, subdivision regulations, fire regulations, health regulations or building and zoning bylaws.

Section 3.06 **Intellectual Property**. (a) Ownership; No Claims; Use of Intellectual Property; Protection of Trade Secrets. Each Company owns or is licensed to use, free and clear of all Liens (other than Permitted Liens), all patents and patent applications; trademarks, trade names, service marks, copyrights, domain names and applications for registration thereof; and technology, trade secrets, proprietary information, inventions, know-how and processes necessary for the conduct of its business as currently conducted (the "**Intellectual Property**"), except for those the failure to own or license which could not reasonably be expected to result in a Material Adverse Effect. No material claim has been asserted and is pending by any person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does any Company know of any valid basis for any such claim. The use of such Intellectual Property by each Company does not infringe the rights of any person, except for such claims and infringements which could not reasonably be expected to result in a Material Adverse Effect. Except pursuant to licenses and other user agreements entered into by each Company in the ordinary course of business which, in the case of licenses and user agreements in existence on the date

hereof, are listed in Schedule 3.06(a), no Company has done anything to authorize or enable any other person to use any such Intellectual Property, which use, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Each Company has taken commercially reasonable measures to protect the secrecy, confidentiality and value of all trade secrets used in such Company's business, to the extent that the loss thereof, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(c) Patents; Registrations. (i) On and as of the Restatement Date, each Company owns and possesses the right to use all issued patents and pending patent applications, trademark, service mark and domain name registrations and pending applications, and copyright registrations and pending applications listed in Schedules 14(a), 14(b) and 14(c) to the Perfection Certificate, and (ii) all patents and registered trademarks, service marks, copyrights and domain names owned by each Company are valid, subsisting and in full force and effect; excepting therefrom, in each case, the failure of which to comply herewith, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(d) No Violations or Proceedings. (i) There is no violation by others of any right of any Company with respect to any Intellectual Property, other than such violations, individually or in the aggregate, that could not reasonably be expected to have a Material Adverse Effect, (ii) no Company is materially infringing upon or misappropriating any copyright, patent, trademark, trade secret or other intellectual property right of any other person, (iii) no Company is in breach of, or in default under, any license of Intellectual Property by any other person to such Company, except in any case where such breach or default, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, and (iv) no proceedings have been instituted or are pending against any Company or threatened, and no claim against any Company has been received by any Company, alleging any such infringement or misappropriation, except to the extent that such proceedings or claims, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(e) No Impairment. Neither the execution, delivery or performance of this Agreement and the other Loan Documents, nor the consummation of the transactions contemplated hereby and thereby, will alter, impair or otherwise affect or require the consent of any other person in respect of any right of any Company in any Intellectual Property, except to the extent that such alteration, impairment, effect or consent could not reasonably be expected to result in a Material Adverse Effect.

(f) No Agreement or Order Materially Affecting Intellectual Property. Except as set forth on Schedule 3.06(e), no Company is subject to any settlement, covenant not to sue or other agreement, or any outstanding Order, which may materially affect the validity or enforceability or restrict in any manner such Company's use, licensing or transfer of any of the Intellectual Property.

Section 3.07 **Equity Interests and Subsidiaries**. (a) Schedule 3.07(a) sets forth a list of (i) each Subsidiary of Borrower and its jurisdiction of incorporation or organization as of the Restatement Date, (ii) each Subsidiary as of the Restatement Date, and (iii) the number of each class of its Equity Interests authorized, and the number outstanding, on the Restatement Date and the number of shares covered by all outstanding options, warrants, rights of conversion or purchase and similar rights on the Restatement Date. All Equity Interests of each Company are duly and validly issued and are fully paid and non-assessable, and all Equity Interests of the Subsidiaries are owned by Borrower directly or indirectly through Wholly Owned Subsidiaries. Each Loan Party is the record and beneficial owner of, and has good and marketable title to, the Equity Interests pledged by it under the Security Documents, free of any and all Liens, rights or claims of other persons, except the security interest created by the Security Documents and any Permitted Liens that arise by operation of applicable Legal Requirements and are not voluntarily granted, and, as of the

Restatement Date, there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any such Equity Interests, except as may be set forth on Schedule 3.07(a).

(a) No consent of any person including any general or limited partner, any other member or manager of a limited liability company, any shareholder or any other trust beneficiary is necessary or reasonably desirable (from the perspective of a secured party) in connection with the creation, perfection or first priority status (or the maintenance thereof) of the security interest of the Collateral Agent in any Equity Interests pledged to the Collateral Agent under the Security Documents or the exercise by the Collateral Agent or any Lender of the voting or other rights provided for in the Security Documents or the exercise of remedies in respect of such Equity Interests.

(b) A complete and accurate organization chart, showing the ownership structure of the Companies on the Restatement Date, both before and after giving effect to the Transactions and Restatement Transactions, is set forth on Schedule 3.07(c).

Section 3.08 **Litigation; Compliance with Laws**. (a) There are no actions, suits, proceedings or, to the knowledge of any Loan Party, investigations at law or in equity by or before any Governmental Authority now pending or, to the knowledge of any Loan Party, threatened against or affecting any Company or any business, property or rights of any Company (i) that involve any Loan Document or any of the Transactions or Restatement Transactions, or (ii) that have resulted in, or could reasonably be expected to result in, a Material Adverse Effect.

(d) Except for matters covered by Section 3.18, no Company or any of its property is (i) in violation of, nor will the continued operation of its property as currently conducted violate, any Legal Requirements (including any zoning or building ordinance, code or approval or any building permits) or any restrictions of record or agreements affecting any Company's Real Property or (ii) in default with respect to any Order, where such violation or default, could reasonably be expected to result in a Material Adverse Effect.

Section 3.09 **Agreements**. (a) No Company is a party to any agreement or instrument or subject to any corporate or other constitutional restriction, or any restriction under its Organizational Documents, that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(a) No Company is in default in any manner under any provision of any Material Agreement evidencing Indebtedness, or any other agreement or instrument to which it is a party or by which it or any of its property is or may be bound or subject, where such default could reasonably be expected to result in a Material Adverse Effect, and no condition exists which, with the giving of notice or the lapse of time or both could reasonably be expected to constitute such a default.

(b) No Company is in default of, lost or has had terminated any Material Agreement. Schedule 3.09(c) accurately and completely lists all Material Agreements (other than leases of Real Property set forth on Schedule 3.05(b)) to which any Company is a party which were in effect on the Restatement Date in connection with the operation of the business conducted thereby and Borrower has delivered to the Administrative Agent (or made available to the Administrative Agent and the Lenders for review on or before the date hereof) complete and correct copies of all such Material Agreements, including any amendments, supplements or modifications with respect thereto, and all such Material Agreements are in full force and effect.

Section 3.10 **Federal Reserve Regulations**. (a) No Company is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(a) No part of the proceeds of any Credit Extension will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of, or that is inconsistent with, the provisions of the regulations of the Board, including Regulation T, U or X. The pledge of the Securities Collateral pursuant to the Security Agreement does not violate such regulations.

Section 3.11 **Investment Company Act; Public Utility Holding Company Act, etc.** No Company is (a) an "investment company" or a company "controlled" by an "investment company," as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended, (b) a "holding company," an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company," as defined in, or subject to regulation under, the Public Utility Holding Company Act of 2005, as amended, or (c) subject to regulation under any Legal Requirement (other than Regulation X) that limits its ability to incur, create, assume or permit to exist Indebtedness.

Section 3.12 **Use of Proceeds**. Borrower will use the proceeds of the Revolving Loans and Swingline Loans on and after the Restatement Date for the repayment of any Term Loans assigned to HF-4 by the Assigning Lenders, for general corporate and working capital purposes (including to effect any Permitted Acquisitions), for Capital Expenditures and for other corporate purposes consistent with the terms of this Agreement.

Section 3.13 **Taxes**. Each Company has (a) timely filed or caused to be timely filed all federal, state, local and foreign Tax Returns required to have been filed by it and all such Tax Returns are true and correct in all material respects and (b) duly and timely paid or caused to be duly and timely paid all Taxes (whether or not shown on any Tax Return) due and payable by it and all assessments received by it, except Taxes that are being contested in good faith by appropriate proceedings and for which such Company has set aside on its books adequate reserves in accordance with GAAP. Each Company has made adequate provision in accordance with GAAP for all Taxes not yet due and payable. No Company is aware of any proposed or pending tax assessments, deficiencies, audits or other proceedings that could reasonably be expected to result in a Material Adverse Effect. No Company has ever been a party to any understanding or arrangement constituting a "tax shelter" within the meaning of Section 6662(d)(2)(C)(ii) of the Code or Sections 6111(c) or 6111(d) of the Code (as in effect prior to the amendment by the American Jobs Creation Act of 2004, P.L. 108-357), or has ever "participated" in a "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4. No Company is a party to any tax sharing or similar agreement.

Section 3.14 **No Material Misstatements**. No information, report, financial statement, certificate (including the Perfection Certificate), Borrowing Request, LC Request, exhibit or schedule furnished by or on behalf of any Company to the Administrative Agent or any Lender in connection with the negotiation of any Loan Document or included therein or delivered pursuant thereto (including the Confidential Information Memorandum), taken as a whole, contained or contains any material misstatement of fact or omitted or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were or are made, not misleading as of the date such information is dated or certified; *provided* that to the extent any such information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast or projection, each Loan Party represents and warrants only that on the date of delivery thereof such forecast or projection was prepared in good faith based upon (i) the assumptions stated therein (which assumptions are believed by the Loan Parties on the date delivered to the Administrative Agent or a Lender to be reasonable), (ii) accounting principles consistent with the

historical audited financial statements of Borrower, and (iii) the best information reasonably available to, or in the possession or control of, the Loan Parties as of the date of delivery thereof to the Administrative Agent or a Lender.

Section 3.15 **Labor Matters**. There are no strikes, lockouts or slowdowns against any Company pending or, to the knowledge of the Loan Parties, threatened that have resulted in, or could reasonably be expected to result in, a Material Adverse Effect. The hours worked by and payments made to employees of any Company have not been in violation of the Fair Labor Standards Act of 1938, as amended, or any other applicable Legal Requirement dealing with such matters in any manner that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect. All payments due from any Company, or for which any claim may be made against any Company, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Company except to the extent that the failure to do so has not resulted in, and could not reasonably be expected to result in, a Material Adverse Effect. The consummation of the Transactions and Restatement Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Company is bound.

Section 3.16 **Solvency**. Both immediately before and immediately after the consummation of the Restatement Transactions to occur on the Restatement Date and immediately following the making of each Credit Extension and after giving effect to the application of the proceeds of each Credit Extension, (a) the fair value of the properties of each Loan Party will exceed its debts and liabilities, subordinated, contingent or otherwise, (b) the present fair saleable value of the property of each Loan Party will be greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured, (c) each Loan Party generally will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured, and (d) each Loan Party will not have unreasonably small capital with which to conduct its business in which it is engaged as such business is now conducted and is proposed, contemplated or about to be conducted following the Restatement Date.

Section 3.17 **Employee Benefit Plans**. (a) The Company and each of its ERISA Affiliates are in material compliance with all applicable Legal Requirements, including all applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder, with respect to all Employee Benefit Plans. Each Employee Benefit Plan complies in all material respects, and is operated and maintained in compliance in all material respects, with all applicable Legal Requirements, including all material applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder. Each Employee Benefit Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination from the Internal Revenue Service and nothing has occurred which would prevent, or cause the loss of, such qualification.

(m) No ERISA Event has occurred or is reasonably expected to occur. No Pension Plan has any Unfunded Pension Liability. Within the last six years, no Pension Plan has been terminated, whether or not in a “standard termination” as that term is used in Section 4041 of ERISA, nor has any Pension Plan (determined at any time within the last six years) with an Unfunded Pension Liability been transferred outside of the “controlled group” (within the meaning of Section 4001(a)(14) of ERISA) of any Company or any of their respective ERISA Affiliates. Using actuarial assumptions and computation methods consistent with subpart I of subtitle E of Title IV of ERISA, the aggregate liabilities of any Company or any of its ERISA Affiliates to all Multiemployer Plans in the event of a complete withdrawal therefrom, as of the close of the most recent fiscal year of each such Multiemployer Plan, have not resulted in, and could not reasonably be expected to result in, a Material Adverse Effect.

(n) Except to the extent required under Section 4980B of the Code, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of any Company or any of its ERISA Affiliates.

Section 3.18 **Environmental Matters**. Except as could not reasonably be expected to result in a Material Adverse Effect:

(i) the Companies and their businesses, operations and Real Property are and have at all times during the Companies' ownership or lease thereof been in compliance with, and the Companies have no liability under, any applicable Environmental Law;

(ii) the Companies have obtained all Environmental Permits required for the conduct of their businesses and operations, and the ownership, operation and use of the Real Property, under all applicable Environmental Laws. The Companies are in compliance with the terms and conditions of such Environmental Permits, and all such Environmental Permits are valid and in good standing. No expenditures or operational adjustments are reasonably anticipated to be required to remain in compliance with the terms and conditions of, or to renew or modify such Environmental Permits during the next five years;

(iii) there has been no Release or threatened Release or any handling, management, generation, treatment, storage or disposal of Hazardous Materials on, at, under or from any Real Property or facility presently or formerly owned, leased or operated by any of the Companies or their predecessors in interest that has resulted in, or is reasonably likely to result in, liability or obligations by any of the Companies under Environmental Law or in an Environmental Claim;

(iv) there is no Environmental Claim pending or, to the knowledge of the Loan Parties, threatened against any of the Companies, or relating to the Real Property currently or formerly owned, leased or operated by any of the Companies or relating to the operations of the Companies, and, to the knowledge of the Loan Parties, there are no actions, activities, circumstances, conditions, events or incidents that are reasonably likely to form the basis of such an Environmental Claim;

(v) no person with an indemnity, contribution or other obligation to any of the Companies relating to compliance with or liability under Environmental Law is in default with respect to any such indemnity, contribution or other obligation;

(vi) no Company is obligated to perform any action or otherwise incur any expense under Environmental Law pursuant to any Order or agreement by which it is bound or has assumed by contract or agreement, and no Company is conducting or financing any Response pursuant to any Environmental Law with respect to any Real Property or any other location;

(vii) no Real Property or facility owned, operated or leased by the Companies and, to the knowledge of the Loan Parties, no Real Property or facility formerly owned, operated or leased by any of the Companies or any of their predecessors in interest is (i) listed or proposed for listing on the National Priorities List as defined in and promulgated pursuant to CERCLA or (ii) listed on the Comprehensive Environmental Response, Compensation and Liability Information System promulgated pursuant to CERCLA or (iii) included on any similar list maintained by any Governmental Authority that indicates that any Company has or may have an obligation to undertake investigatory or remediation obligations under applicable Environmental Laws;

(viii) no Lien has been recorded or, to the knowledge of any Loan Party, threatened under any Environmental Law with respect to any Real Property or property of the Companies;

(ix) the execution, delivery and performance of this Agreement and the other Loan Documents and the consummation of the Transactions, the Restatement Transactions and the other transactions contemplated hereby and thereby will not require any notification, registration, filing, reporting, disclosure, investigation, remediation or cleanup obligations pursuant to any Governmental Real Property Disclosure Requirements or any other Environmental Law; and

(x) the Companies have made available to the Lenders all material records and files in the possession, custody or control of, or otherwise reasonably available to, the Companies concerning compliance with or liability or obligation under Environmental Law, including those concerning the condition of the Real Property or the existence of Hazardous Materials at Real Property or facilities currently or formerly owned, operated, leased or used by any of the Companies.

Section 3.19 **Health Care Matters**. Without limiting or being limited by any other provision of any Loan Document:

(a) Health Care Programs and Third-Party Payor Participation. The Company participates in and has not been excluded from the federal and state health care programs (individually, a "**Program**" and collectively, the "**Programs**") listed on Schedule 3.19(a). A list of all of the Companies' existing (x) Medicare Provider Agreements and numbers and Medicaid Provider Agreements and numbers, and (y) all other federal and state Program provider agreements and numbers, excluding TRICARE and CHAMPUS, pertaining to the business of each Company or, if such contracts do not exist, other documentation evidencing such participation are set forth on Schedule 3.19(a). The Companies' existing (x) Medicare Provider Agreements and numbers and Medicaid Provider Agreements and numbers, and (y) all other federal and state Program provider agreements and numbers, including TRICARE and CHAMPUS shall be referred to herein as "**Program Agreements**." The Companies Reimbursement Approvals include contractual arrangements with third-party payors including, but not limited to, private insurance, managed care plans and HMOs, health care providers and employee assistance programs (the "**Third-Party Payors**"). A list of each Companies' existing Reimbursement Approvals with Third-Party Payor(s) that provide for payment of $500,000 or more in calendar year 2010 pertaining to such Company Subsidiary's business is set forth on Schedule 3.19(a) (the "**Third-Party Payor Contracts**"). The Program Agreements and Third-Party Payor Contracts constitute legal, valid, binding and enforceable obligations of the Company that is a party thereto and the other parties thereto (subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless whether considered in a proceeding at equity or in law) and, to the knowledge of the Company, are in full force and effect. To the knowledge of the Companies, no Company is in default under any Program Agreement or under any Third-Party Payor Contract to which it is a party and, to the knowledge of the Company, the other parties thereto are not in material default thereunder. The Company is in material compliance with the rules and policies respecting each Program Agreement and Third-Party Payor Contract, including, but not limited to, all certification, billing, reimbursement and documentation requirements. Except as set forth on Schedule 3.19(a), no action has been taken by any Governmental Authority or, to the knowledge of the Company, recommended by any Governmental Authority, either to revoke, withdraw or suspend any Program Agreement or to terminate or decertify any participation of any Company in any "Federal Health Care Program" (as that term is defined in 42 U.S.C. § 1320a-7b(f)) in which it participates (including, but not limited to Medicare, Medicaid, TRICARE and CHAMPUS), nor is there any decision by the Company not to renew any Program Agreement. To the knowledge of the Companies, except as could not reasonably be expected to have a Material Adverse Effect, no party to a Program Agreement or Third-Party Payor

Contract or other government regulatory authority has threatened in writing revocation, suspension, termination, probation, restriction, limitation or nonrenewal affecting any Program Agreement or Third-Party Payor Contract.

(b) Health Care Permits. Except as could not reasonably be expected to have a Material Adverse Effect, each Company holds all Health Care Permits necessary or required by applicable Legal Requirement or Governmental Authority for the operation of the business of such Company. Schedule 3.19(b) sets forth all such Health Care Permits held by each Company as of the Restatement Date (individually, a "**Company Health Care Permit**," and collectively, the "**Company Health Care Permits**"). Except as could not reasonably be expected to have a Material Adverse Effect, there are no pending or, to the knowledge of any Loan Party, threatened suits or proceedings that could reasonably be expected to result in the suspension, revocation, restriction, amendment or nonrenewal of any Company Health Care Permit, and no event which (whether with notice or lapse of time or both) could reasonably be expected to result in a suspension, revocation, restriction, amendment or nonrenewal of any Company Health Care Permit has occurred. Except as could not reasonably be expected to have a Material Adverse Effect, each Company is in compliance with the terms of the Company Health Care Permits.

(c) Accreditations. Except as could not reasonably be expected to have a Material Adverse Effect, each Company holds all Accreditations necessary or required by applicable Legal Requirements or Governmental Authority for the operation of the business of such Company (including accreditation by the appropriate Governmental Authorities and industry accreditation agencies and accreditation and certifications necessary to receive payment and compensation and to participate under Medicare, Medicaid, TRICARE/CHAMPUS, Blue Cross/Blue Shield and other payor programs relevant to any Company) (individually, a "**Company Accreditation**," and collectively, the "**Company Accreditations**"). There are no pending or, to the knowledge of any Loan Party, threatened suits or proceedings that could reasonably be expected to result in the suspension, revocation, restriction, amendment or nonrenewal of any Company Accreditations, and no event which (whether with notice or lapse of time or both) could reasonably be expected to result in a suspension, revocation, restriction, amendment or nonrenewal of any Company Accreditation has occurred. Except as could not reasonably be expected to have a Material Adverse Effect, each Company is in compliance with the terms of the Company Accreditations.

(d) Reimbursement Approvals. Except as could not be expected to have a Material Adverse Effect, each Company holds all Reimbursement Approvals necessary or required by applicable law or Governmental Authority for the operation of the business of such Company (individually, a "**Company Reimbursement Approval**," and collectively, the "**Company Reimbursement Approvals**"). Reimbursement Approvals include, but are not limited to, those items listed on Schedule 3.19(a). Except as could not reasonably be expected to have a Material Adverse Effect, there are no pending or, to the knowledge of any Loan Party, threatened suits or proceedings that could reasonably be expected to result in the suspension, revocation, restriction, amendment or nonrenewal of any Company Reimbursement Approvals, and no event which (whether with notice or lapse of time or both) could reasonably be expected to result in a suspension, revocation, restriction, amendment or nonrenewal of any Company Reimbursement Approval has occurred. Except as could not reasonably be expected to have a Material Adverse Effect, each Company is in compliance with the terms of the Company Reimbursement Approvals.

(e) Regulatory Filings. Since December 31, 2009, each Company has timely filed, or caused to be filed, all material regulatory reports, schedules, statements, documents, filings, submissions, forms, registrations and other documents, together with any amendments required to be made with respect thereto, that each was required to file with any Governmental Authority or pursuant to any Company Health

Care Permit, Company Accreditation or Company Reimbursement Approval or other applicable Legal Requirement, including health, pharmacy, laboratory, drug enforcement, Medicaid and Medicare regulatory authorities ("**Company Regulatory Filings**"), and has timely paid all amounts, Taxes, fees and assessments due and payable in connection therewith, except where the failure to make such filings or payments on a timely basis could not reasonably be expected to have a Material Adverse Effect. All such Company Regulatory Filings complied in all material respects with applicable Legal Requirements.

(f) Surveys, Audits and Investigations. Schedule 3.19(f) sets forth a list of all notices received during the fiscal year ended December 31, 2010, of material noncompliance, requests for material remedial action, investigations, return of overpayment or imposition of fines (whether ultimately paid or otherwise resolved) by any Governmental Authority or pursuant to any Company Health Care Permit, Company Accreditation or Company Reimbursement Approval (the "**Health Care Audits**"), other than ordinary course overpayments and/or notices advising of routine payor audits. For purposes this Section 3.19(f), a routine payor audit is considered to be an audit that requests records for identified patients during a limited period of time, but does not include an audit that identifies any specific area of review. Each Company has prepared and submitted timely all corrective action plans or responses required to be prepared and submitted in response to any Health Care Audits and has implemented all of the corrective actions described in such corrective action plans, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. No Company has any (A) uncured deficiency that could lead to the imposition of a remedy or (B) existing accrued and/or unpaid indebtedness to any Governmental Authority or pursuant to any Company Reimbursement Approval, including Medicare or Medicaid, excepting any that could not reasonably be expected to have a Material Adverse Effect.

(g) Compliance with Laws. Each Company is in compliance with all Medicare and Medicaid provisions of the Social Security Act, the anti-kickback provisions of the Social Security Act, the Stark anti-referral provisions of the Social Security Act, the False Claims Act, the Civil Monetary Penalty Law of the Social Security Act, the privacy and security provisions of the Health Insurance Portability and Accountability Act of 1996, and similar federal or state laws or regulations applicable to services, payments, record keeping, inventory and operations of each Company (the "**Health Care Laws**"), except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(h) Corporate Integrity Agreement; Exclusion. No Company nor, to the knowledge of the Loan Parties, any director, officer, manager, member or partner of any Company (in such capacity, but not otherwise) is party to a corporate integrity agreement, consent order, consent decree, permanent injunction or other settlement agreement with any Governmental Authority or pursuant to any Company Health Care Permit, Company Accreditation or Company Reimbursement Approval. No Company nor, to the knowledge of the Loan Parties, any director, officer, manager, member, partner, managing employee, or direct or indirect owner of 5% or more of the Equity Interests of any Company has been excluded from participating in state or federal health care programs, including Medicare and Medicaid, or debarred from contracting with Governmental Authorities.

(i) Transaction Documents. The execution and delivery of the Transaction Documents, and each Company's performance thereunder (including the performance of the pre- and post- closing notices and applications as provided in the Transaction Documents) will not (i) result in the loss of or limitation of any Company Health Care Permits, Company Accreditations or Company Reimbursement Approvals or (ii) reduce receipt of the ongoing payments or reimbursements pursuant to the Company Reimbursement Approvals that the Company is receiving as of the date hereof.

(j) Cash Management. Schedule 3.19(j) sets forth, as of the Restatement Date, an accurate and complete description of the cash management system maintained by each Company and into which are deposited receivables generated pursuant to Company Reimbursement Approvals.

Section 3.20 **Insurance**. Schedule 3.20 sets forth a description in reasonable detail of all insurance maintained by each Company as of the Restatement Date. All insurance maintained by the Companies is in full force and effect, all premiums due have been duly paid, no Company has received notice of violation or cancellation thereof, the Premises, and the use, occupancy and operation thereof, comply with all Insurance Requirements, and there exists no default under any Insurance Requirement, in each case, to the extent that the absence of the foregoing could reasonably be expected to have a Material Adverse Effect. Each Company has insurance in such amounts and covering such risks and liabilities as are customary for companies of a similar size engaged in similar businesses in similar locations.

Section 3.21 **Security Documents**. (a) The Security Agreement (as in effect immediately prior to the Restatement Date) was effective to create, and the Security Agreement as of the Restatement Date is effective to continue in the same force and effect in favor of the Collateral Agent for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, the Security Agreement Collateral and, when (i) financing statements and other filings in appropriate form are filed in the offices specified on Schedule 7 to the Perfection Certificate and (ii) upon the taking of possession or control by the Collateral Agent of the Security Agreement Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Collateral Agent to the extent possession or control by the Collateral Agent is required by each Security Document), the Liens created by the Security Agreement shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the grantors thereunder in the Security Agreement Collateral (other than (A) the Intellectual Property Collateral (as defined in the Security Agreement) and (B) such Security Agreement Collateral in which a security interest cannot be perfected under the UCC as in effect at the relevant time in the relevant jurisdiction), in each case subject to no Liens other than Permitted Liens.

(a) When (i) the Security Agreement or a short form thereof is filed in the United States Patent and Trademark Office and the United States Copyright Office, and (ii) financing statements and other filings in appropriate form are filed in the offices specified on Schedule 7 to the Perfection Certificate, the Liens created by such Security Agreement shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the grantors thereunder in the Intellectual Property Collateral (as defined in such Security Agreement), in each case subject to no Liens other than Permitted Liens.

(b) Each Mortgage, if any, upon the execution and delivery thereof, shall be effective to create, in favor of the Collateral Agent, for its benefit and the benefit of the Secured Parties, legal, valid and enforceable first priority Liens on, and security interests in, all of the Loan Parties' right, title and interest in and to the Mortgaged Properties thereunder and the proceeds thereof, subject only to Permitted Liens, and when the Mortgages are filed or recorded in accordance with the provisions of Sections 5.11 and 5.12 when such Mortgage is filed or recorded in the offices specified in the local counsel opinion delivered with respect thereto in accordance with the provisions of Sections 5.11 and 5.12, the Mortgages shall constitute fully perfected first priority Liens on, and security interests in, all right, title and interest of the Loan Parties in the Mortgaged Properties and the proceeds thereof, in each case prior and superior in right to any other person, other than Permitted Liens.

(c) Each Security Document delivered pursuant to Sections 5.11 and 5.12 will, upon execution and delivery thereof, be effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, all of the Loan Parties' right,

title and interest in and to the Collateral thereunder, and (i) when all appropriate filings or recordings are made in the appropriate offices as may be required under applicable Legal Requirements and (ii) upon the taking of possession or control by the Collateral Agent of such Collateral with respect to which a security interest may be perfected only by possession or control (which such possession or control shall be given to the Collateral Agent to the extent required by any Security Document), the Liens in favor of the Collateral Agent created under such Security Document will constitute valid, enforceable and fully perfected first priority Liens on, and security interests in, all right, title and interest of the Loan Parties in such Collateral, in each case subject to no Liens other than Permitted Liens.

Section 3.22 **Acquisition Documents; Representations and Warranties in Acquisition Agreement**. Schedule 3.22 lists (i) each exhibit, schedule, annex or other attachment to the Acquisition Agreement and (ii) each agreement, certificate, instrument, letter or other document contemplated by the Acquisition Agreement or any item referred to in clause (i) to be entered into, executed or delivered or to become effective in connection with the Acquisition or otherwise entered into, executed or delivered in connection with the Acquisition. The Lenders have been furnished true and complete copies of each Acquisition Document to the extent executed and delivered on or prior to the Restatement Date.

Section 3.23 **Anti-Terrorism Law**. (a) No Company and, to the knowledge of the Loan Parties, none of its Affiliates is in violation of any Legal Requirements relating to terrorism or money laundering ("**Anti-Terrorism Laws**"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "**Executive Order**"), and the USA PATRIOT Improvement and Reauthorization Act, Public Law 109-177 (March 9, 2006), as amended (the "**Patriot Act**").

(a) No Company and to the knowledge of the Loan Parties, no Affiliate or broker or other agent of any Loan Party acting or benefiting in any capacity in connection with the Credit Extensions is any of the following:

(i) a person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a person owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(v) a person that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control ("**OFAC**") at its official website or any replacement website or other replacement official publication of such list.

(b) No Company and, to the knowledge of the Loan Parties, no broker or other agent of any Company acting in any capacity in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in paragraph (b) above, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engages in or conspires to

engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

Section 3.24 **Borrowing Base Matters**. (a) All Receivable Information, information provided in the application for the program effectuated by the Collateral Management Agreement, and each other document, report and Transmission (as defined in the Collateral Management Agreement) provided by Loan Party to the Collateral Manager is or shall be accurate in all material respects as of its date and as of the date so furnished, and no such document contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained therein, in the light of the circumstances under which they were made and when taken as a whole, not misleading.

(a) Each Receivable identified in each Borrowing Base Certificate is, as of the date of such Borrowing Base Certificate, an Eligible Receivable and all Inventory identified in each Borrowing Base Certificate is, as the date of such Borrowing Base Certificate, Eligible Inventory.

(b) All required Notices to Obligors (as defined in the Collateral Management Agreement) have been prepared and delivered to each Obligor, and all invoices now bear only the appropriate remittance instructions for payment direction to the applicable Lockbox or Lockbox Account, as the case may be.

(c) The Lockboxes are the only post office boxes and the Lockbox Accounts are the only lockbox accounts maintained for Receivables; and no direction of any Loan Party is in effect directing Obligors to remit payments on Receivables other than to the Lockboxes or Lockbox Accounts.

(d) None of the Eligible Receivables constitutes or has constituted an obligation of any Person which is an Affiliate of Borrower.

(e) The Obligor of each Eligible Receivable has not been the Obligor of any Defaulted Receivables in the past 12 months (other than, for the purpose of this clause, as a result of good faith disputes).

(f) Each Receivable that is an Unbilled Receivable will be, or has been, billed to the Obligor of such Receivable within 30 days of the Last Service Date, or in the case of a Rebate Receivable, will be, or has been, billed to the Obligor of the Rebate Receivable within 60 days after the end of the fiscal quarter in which such Rebate Receivable became due and payable.

ARTICLE IV
CONDITIONS TO CREDIT EXTENSIONS

Section 4.01 **Conditions to Restatement Date**. [Intentionally Omitted].

Section 4.02 **Conditions to All Credit Extensions**. The obligation of each Lender and each Issuing Lender to make any Credit Extension (including the initial Credit Extension) shall be subject to, and to the satisfaction of, each of the conditions precedent set forth below.

(e) Notice. The Administrative Agent (with a copy to the Collateral Manager) shall have received (x) a Borrowing Request as required by Section 2.03 (or such notice shall have been deemed given in accordance with Section 2.03) if Loans are being requested or, in the case of the issuance, amendment, extension or renewal of a Letter of Credit, the Issuing Lender and the Administrative Agent shall have

received a notice requesting the issuance, amendment, extension or renewal of such Letter of Credit as required by Section 2.18(b) or, in the case of the Borrowing of a Swingline Loan, the Swingline Lender and the Administrative Agent shall have received a Borrowing Request as required by Section 2.17(b) and (y) not later than one Business Day prior to the proposed date of the applicable Credit Extension, a Borrowing Base Certificate which shall have been prepared (and calculated) as of such date of receipt by the Administrative Agent (it being understood that each Borrowing Base Certificate shall include such supporting information as the Administrative Agent or the Collateral Manager may reasonably, respectively, request from time to time).

(f) No Default. No Default or Event of Default shall have occurred and be continuing on such date.

(g) Representations and Warranties. Each of the representations and warranties made by any Loan Party set forth in Article III or in any other Loan Document shall be true and correct in all material respects (or true and correct in all respects in the case of representations and warranties qualified by materiality or Material Adverse Effect) on and as of the date of such Credit Extension with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects (or true and correct in all respects in the case of representations and warranties qualified by materiality or Material Adverse Effect) on and as of such earlier date).

(h) No Legal Bar. No Order of any Governmental Authority shall purport to restrain (i) any Lender from making any Loans to be made by it or (ii) the Issuing Lender from issuing any Letters of Credit to be issued by it. No injunction or other restraining Order shall have been issued, shall be pending or noticed with respect to any action, suit or proceeding seeking to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated by this Agreement or the making of Loans or the issuance of Letters of Credit hereunder.

Each of the delivery of a Borrowing Request or notice requesting the issuance, amendment, extension or renewal of a Letter of Credit and the acceptance by Borrower of the proceeds of such Credit Extension shall constitute a representation and warranty by Borrower and each other Loan Party that on the date of such Credit Extension (both immediately before and after giving effect to such Credit Extension and the application of the proceeds thereof) the conditions contained in Sections 4.02(a)-(c) have been satisfied. Borrower shall provide such information (including calculations in reasonable detail of the covenants in Section 6.10) as the Administrative Agent may reasonably request to confirm that the conditions in this Section 4.02 have been satisfied.

Section 4.03 Conditions to Amendment Date.The obligation of each Lender and each Issuing Lender to make any Credit Extension on and after the Amendment Date shall be subject to, and to the satisfaction of, each of the conditions precedent set forth below.

(i) Documents. All legal matters incident to this Agreement, as amended and restated, the Credit Extensions hereunder, the related documents and the other Loan Documents being executed on or about the Amendment Date, shall be satisfactory to the Lenders, to the Issuing Lender and to the Administrative Agent and the Administrative Agent shall have received a fully executed counterpart of this Agreement and each other Loan Document to be executed and delivered on the Amendment Date.

(j) No Default. No Default or Event of Default shall have occurred and be continuing on the Amendment Date.

(k) Representations and Warranties. Each of the representations and warranties made by any Loan Party set forth in Article III or in any other Loan Document shall be true and correct in all material respects (or true and correct in all respects in the case of representations and warranties qualified by materiality or Material Adverse Effect) on and as of the Amendment Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects (or true and correct in all respects in the case of representations and warranties qualified by materiality or Material Adverse Effect) on and as of such earlier date).

(l) No Legal Bar. No Order of any Governmental Authority shall purport to restrain (i) any Lender from making any Loans to be made by it or (ii) the Issuing Lender from issuing any Letters of Credit to be issued by it. No injunction or other restraining Order shall have been issued, shall be pending or noticed with respect to any action, suit or proceeding seeking to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated by this Agreement or the making of Loans or the issuance of Letters of Credit hereunder.

ARTICLE V
AFFIRMATIVE COVENANTS

Each Loan Party warrants, covenants and agrees with the Administrative Agent, the Collateral Agent, the Issuing Lender and each Lender that so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest and premium (if any) on each Loan, all Fees and all other expenses or amounts payable under any Loan Document shall have been paid in full and all Letters of Credit have been canceled or have expired and all amounts drawn thereunder have been reimbursed in full, each Loan Party will, and will cause each of its Subsidiaries to:

Section 5.01 **Financial Statements, Reports, etc.** Furnish to the Administrative Agent:

(i) Annual Reports. As soon as available and in any event within 90 days after the end of each fiscal year, the consolidated balance sheet of Borrower as of the end of such fiscal year and related consolidated statements of income, cash flows and stockholders' equity for such fiscal year, in comparative form with such financial statements as of the end of, and for, the preceding fiscal year, and notes thereto (including a note with an unaudited consolidating statement of income separating out Borrower and its Subsidiaries), all prepared in accordance with GAAP and accompanied by an opinion of Ernst & Young LLP or other independent public accountants of recognized national standing reasonably satisfactory to the Administrative Agent (which opinion shall not be qualified as to scope or contain any going concern or other material qualification), stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of Borrower as of the dates and for the periods specified in accordance with GAAP;

(j) Quarterly Reports. As soon as available and in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year, the consolidated balance sheet of Borrower as of the end of such fiscal quarter and related consolidated statements of income and cash flows for such fiscal quarter and for the then elapsed portion of the fiscal year, in comparative form with the consolidated statements of income and cash flows for the comparable periods in the previous fiscal year including a note with a consolidating statement of income separating out Borrower and its Subsidiaries), all prepared in accordance with GAAP and accompanied by a certificate of a Financial Officer stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of Borrower as of the date and for the periods specified in accordance with GAAP consistently

applied, and on a basis consistent with audited financial statements referred to in clause (a) of this Section 5.01, subject to normal year-end adjustments, including audit adjustments, and the absence of footnotes;

(k) Monthly Reports. Within 30 days after the end of each month, the consolidated balance sheet of Borrower as of the end of such month and the related consolidated statements of income and cash flows of Borrower for such month and for the then elapsed portion of the fiscal year, in comparative form with the consolidated statements of income and cash flows for the comparable periods in the previous fiscal year, accompanied by a certificate of a Financial Officer stating that such financial statements fairly present, in all material respects, the consolidated results of operations and cash flows of Borrower as of the date and for the periods specified in accordance with GAAP consistently applied, subject to normal year-end adjustments, including audit adjustments, and the absence of footnotes;

(l) Financial Officer's Certificate. (i) Concurrently with any delivery of financial statements under Section 5.01(a), (b) or (c) above, a Compliance Certificate certifying that no Default has occurred or, if such a Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto, and (ii) concurrently with any delivery of financial statements under Section 5.01(a) or (b) above, a Compliance Certificate setting forth computations in reasonable detail satisfactory to the Administrative Agent demonstrating compliance with the covenants contained in Section 6.10;

(m) Financial Officer's Certificate Regarding Collateral. Concurrently with any delivery of financial statements under Section 5.01(a) above and delivery of a Perfection Certificate Supplement under Section 5.13(b), a certificate of a Financial Officer certifying that all UCC financing statements (including fixture filings, as applicable) or other appropriate filings, recordings or registrations, including all refilings, rerecordings and reregistrations, containing a sufficient description of the Collateral have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction necessary to protect, perfect or maintain the perfection or priority of the Liens under the Security Documents for a period of not less than 18 months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period);

(n) Financial Officer's Report on Restructuring Costs. Concurrently with any delivery of financial statements under Section 5.01(a) and (b) relating to any reporting period for the 2011 fiscal year, a report from a Financial Officer setting forth in detail an itemized list by category of all Consolidated Permitted Restructuring Costs reflected in such financial statements, including a description of the projected savings and benefits anticipated therefrom, together with such backup documentation reasonably requested by the Administrative Agent in connection therewith;

(o) Public Reports. Promptly after the same become publicly available, copies of all periodic and other reports, proxy statements, notices and other materials or information filed by any Company with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of the Securities and Exchange Commission, or with any national securities exchange, or distributed to holders of its Indebtedness pursuant to the terms of the documentation governing such Indebtedness (or any trustee, agent or other representative therefor), as the case may be; *provided*, that copies need not be provided of any such reports posted publicly to the Electronic Data Gathering, Analysis and Retrieval System or any successor reporting system;

(p) Projections. No later than 60 days after the first day of each fiscal year of Borrower, updated (through 2016) 3-year projected financial statements, in form reasonably satisfactory to the

Administrative Agent, including profit & loss statements and statements of cash flow, of Borrower and its Subsidiaries;

(q) Organization. Within 45 days after the close of each fiscal year of Borrower, Borrower shall deliver an accurate and complete organization chart showing the ownership structure of the Companies as of the last day of such fiscal year, or confirm that there are no changes to Schedule 3.07(c);

(r) Organizational Documents. (i) Promptly copies of any Organizational Documents that have been amended or modified in a manner that is, or could reasonably be expected to be, adverse in any material respects to any Agent or Lender, and (ii) a copy of any notice of default given or received by any Company under any Organizational Document within 15 days after such Company gives or receives such notice; and

(s) Net Cash Proceeds. Promptly and in any event within one Business Day, notice to the Administrative Agent of receipt of Net Cash Proceeds in excess of $500,000.

(t) Other Information. Promptly, from time to time, such other information regarding the operations, business affairs and financial condition of any Company, or compliance with the terms of any Loan Document, or the environmental condition of any Real Property, as the Administrative Agent or any Lender may reasonably request.

Section 5.02 **Litigation and Other Notices**. Furnish to the Administrative Agent written notice of the following promptly (and, in any event, within three Business Days following any Responsible Officer's knowledge thereof):

(m) any Default or any default or event of default under the Senior Note Documents, in each case, specifying the nature and extent thereof and the corrective action (if any) taken or proposed to be taken with respect thereto;

(n) the filing or commencement of, or any threat or notice of intention of any person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity or otherwise by or before any Governmental Authority, (i) against any Company or any Affiliate thereof that could reasonably be expected to result in a Material Adverse Effect, (ii) with respect to any Loan Document or (iii) with respect to any of the other Transactions or Restatement Transactions;

(o) any development that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect;

(p) the occurrence of a Casualty Event in excess of $500,000 (whether or not covered by insurance);

(q) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of Borrower and its Subsidiaries in an aggregate amount exceeding $500,000;

(r) the receipt by any Company of any notice of any Environmental Claim or violation of or potential liability under, or knowledge by any Company that there exists a condition that could reasonably be expected to result in an Environmental Claim or a violation of or liability under, any Environmental Law,

except for Environmental Claims, violations and liabilities the consequence of which, in the aggregate, would not be reasonably likely to subject the Companies collectively to liabilities exceeding $500,000;

(s) (i) the incurrence of any Lien (other than Permitted Liens) on, or claim asserted against all or any substantial portion of the Collateral or (ii) the occurrence of any other event which could reasonably be expected to materially and adversely affect the value of the Collateral;

(t) the receipt by any Company of any notice of any termination, suspension, revocation, transfer, surrender, or other material impairment of any material Company Health Care Permit, material Company Accreditation or material Company Reimbursement Approval; and

(u) the receipt by any Company of any notice of any Health Care Survey or Health Care Audit that, alone or together with any other Health Care Survey or Health Care Audit, could reasonably be expected to result in liability of the Companies in an aggregate amount exceeding $500,000 in any twelve-month period.

Section 5.03 **Existence; Businesses and Properties**. (a) Do or cause to be done all things necessary to preserve, renew and maintain in full force and effect its legal existence, except as otherwise expressly permitted under Section 6.05 or Section 6.06.

(h) Do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, Permits, privileges, franchises, authorizations, patents, copyrights, trademarks and trade names material to the conduct of its business; maintain and operate such business in substantially the manner in which it is conducted and operated on the Restatement Date; comply with all applicable Legal Requirements (including any and all zoning, building, Environmental Law, ordinance, code or approval or any building permits or any restrictions of record or agreements affecting the Real Property) and decrees and Orders of any Governmental Authority, whether now in effect or hereafter enacted, in each case, except where the failure to comply with such Legal Requirements could not reasonably be expected to result in a Material Adverse Effect; pay and perform its obligations under all Leases and Transaction Documents (other than the Loan Documents) except where the failure to perform such obligations could not reasonably be expected to result in a Material Adverse Effect; pay and perform its obligations under all Loan Documents; and at all times maintain, preserve and protect all property material to the conduct of such business and keep such property in good repair, working order and condition (other than wear and tear occurring in the ordinary course of business) and from time to time make, or cause to be made, all necessary and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith may be properly conducted at all times; *provided* that nothing in this Section 5.03(b) shall prevent (i) dispositions of property, consolidations or mergers by or involving any Company in accordance with Section 6.05 or Section 6.06, (ii) the withdrawal by any Company of its qualification as a foreign corporation in any jurisdiction where such withdrawal could not reasonably be expected to result in a Material Adverse Effect, or (iii) the abandonment by any Company of any Intellectual Property that such Company reasonably determines is not useful to its businesses or no longer commercially desirable.

Section 5.04 **Insurance**. (a) Keep its insurable property adequately insured at all times by financially sound and reputable insurers; maintain such other insurance, to such extent and against such risks as is customary with companies in the same or similar businesses operating in the same or similar locations, including insurance with respect to Mortgaged Properties and other properties material to the business of the Companies against such casualties and contingencies and of such types and in such amounts with such deductibles as is customary in the case of similar businesses operating in the same or similar locations,

including (i) physical hazard insurance on an "all risk" basis, (ii) commercial general liability against claims for bodily injury, death or property damage covering any and all insurable claims, (iii) explosion insurance in respect of any boilers, machinery or similar apparatus constituting Collateral, (iv) business interruption insurance, (v) worker's compensation insurance and such other insurance as may be required by any Legal Requirement and (vi) such other insurance against risks as the Administrative Agent may from time to time require (such policies to be in such form and amounts and having such coverage as may be reasonably satisfactory to the Administrative Agent and the Collateral Agent); *provided* that with respect to physical hazard insurance, (x) neither the Collateral Agent nor the applicable Company shall agree to the adjustment of any claim thereunder without the consent of the other (such consent not to be unreasonably conditioned, withheld or delayed), and (y) no consent of any Company shall be required during an Event of Default.

(g) All such insurance shall (i) provide that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least 15 days after receipt by the Collateral Agent of written notice thereof, (ii) name the Collateral Agent as mortgagee (in the case of property insurance) or additional insured on behalf of the Secured Parties (in the case of liability insurance) or loss payee (in the case of property insurance), as applicable, (iii) if reasonably requested by the Collateral Agent, include a breach of warranty clause and (iv) be reasonably satisfactory in all other material respects to the Collateral Agent. Borrower shall not permit, consent to or seek any amendment or change to any insurance policy that effects a material reduction in amount or a material change in coverage under such policy without first providing the Collateral Agent with at least 15 days prior written notice thereof.

(h) Notify the Administrative Agent and the Collateral Agent immediately whenever any separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 5.04 is taken out by any Company; and promptly (and, in any event, within three Business Days) deliver to the Administrative Agent and the Collateral Agent a duplicate original copy of such policy or policies.

(i) Deliver to the Administrative Agent and the Collateral Agent a report of a reputable insurance broker with respect to such insurance and such supplemental reports with respect thereto as the Administrative Agent or the Collateral Agent may from time to time reasonably request, but unless a Default or Event of Default has occurred and is then continuing, not more frequently than annually.

Section 5.05 **Obligations and Taxes**. (a) Pay its Indebtedness and other obligations promptly and in accordance with their terms and pay and discharge promptly when due all material Taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all material lawful claims for labor, services, materials and supplies or otherwise that, if unpaid, might give rise to a Lien other than a Permitted Lien upon such properties or any part thereof; *provided* that such payment and discharge shall not be required with respect to any such Indebtedness, other obligation, Tax, assessment, charge, levy or claim so long as (i) the validity or amount thereof shall be contested in good faith by appropriate proceedings timely instituted and diligently conducted and the applicable Company shall have set aside on its books adequate reserves or other appropriate provisions with respect thereto in accordance with GAAP, and (ii) such contest operates to suspend collection of the contested Indebtedness, other obligation, Tax, assessment or charge and enforcement of a Lien other than a Permitted Lien.

(c) Timely and correctly file all Tax Returns (other than immaterial Tax Returns, as reasonably determined by the Administrative Agent) required to be filed by it.

(d) Borrower does not intend to treat the Loans as being a "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4. In the event Borrower determines to take any action inconsistent with such intention, it will promptly notify the Administrative Agent thereof.

Section 5.06 **Employee Benefits**. (a) Comply in all material respects with all applicable Legal Requirements, including the applicable provisions of ERISA and the Code with respect to all Employee Benefit Plans and (b) furnish to the Administrative Agent (x) as soon as possible after, and in any event within 5 Business Days after any Responsible Officer of any Company or any ERISA Affiliate of any Company knows or has reason to know that, any ERISA Event or other event with respect to an Employee Benefit Plan has occurred that, alone or together with any other ERISA Event could reasonably be expected to result in liability of the Companies or any of their ERISA Affiliates in an aggregate amount exceeding $1,000,000 or the imposition of a Lien, a statement of a Responsible Officer of Borrower setting forth details as to such ERISA Event and the action, if any, that the Companies propose to take with respect thereto, and (y) upon request by the Administrative Agent, copies of (i) annual report (Form 5500 Series) filed by any Company or any ERISA Affiliate with the Employee Benefits Security Administration with respect to each Employee Benefit Plan; (ii) the most recent actuarial valuation report for each Pension Plan; (iii) all notices received by any Company or any ERISA Affiliate from a Multiemployer Plan sponsor or any governmental agency concerning an ERISA Event; and (iv) such other information, documents or governmental reports or filings relating to any Employee Benefit Plan as the Administrative Agent shall reasonably request.

Section 5.07 **Maintaining Records; Access to Properties and Inspections; Annual Meetings**. (a) Keep proper books of record and account in which full, true and correct entries in conformity with GAAP and all Legal Requirements are made of all dealings and transactions in relation to its business and activities. Each Company will permit any representatives designated by the Administrative Agent or a Lender as often as reasonably requested (except that, in the case of representatives designated by a Lender, not more frequently than twice in any fiscal year of Borrower unless a Default or Event of Default has occurred and is then continuing), in each case, to visit and inspect the financial records and the property of such Company at reasonable times during normal business hours and to make extracts from and copies of such financial records, and permit any representatives designated by the Administrative Agent or any Lender to discuss the affairs, finances, accounts and condition of any Company with the officers and employees thereof and Advisors thereof in the presence of representatives of such Company (unless such representatives are not then available).

(c) Within 120 days after the close of each fiscal year of the Companies, at the request of the Administrative Agent or Required Lenders, hold a meeting (at a mutually agreeable location and time or, at the option of the Administrative Agent, a conference call) with all Lenders who choose to attend such meeting or conference call at which meeting or conference call shall be reviewed the financial results of the previous fiscal year and the financial condition of the Companies and the budgets presented for the current fiscal year of the Companies.

Section 5.08 **Use of Proceeds**. Use the proceeds of the Loans only for the purposes set forth in Section 3.12 and request the issuance of Letters of Credit only in accordance with the definition of "Standby Letter of Credit" and "Commercial Letter of Credit."

Section 5.09 **Compliance with Environmental Laws; Environmental Reports**.

(a) Except where the failure to do so could not reasonably be expected to have a Material Adverse Effect, comply, and cause all lessees and other persons occupying Real Property owned, operated or leased by any

Company to comply, in all material respects, with all Environmental Laws and Environmental Permits applicable to its operations and the Real Property; obtain and maintain in full force and effect all material Environmental Permits applicable to its operations and the Real Property; and conduct all Responses required by any Governmental Authority or under any applicable Environmental Laws, and in accordance with, the requirements of any Governmental Authority and applicable Environmental Laws.

(f) Do or cause to be done all things necessary to prevent any Release of Hazardous Materials in, on, under, to or from any Real Property owned, leased or operated by any of the Companies or their predecessors in interest except in full compliance with applicable Environmental Laws or an Environmental Permit, and ensure that there shall be no Hazardous Materials in, on, under or from any Real Property owned, leased or operated by any of the Companies except those that are used, stored, handled and managed in full compliance with applicable Environmental Laws.

(g) Undertake all actions, including response actions, necessary, at the sole cost and expense of Borrower, (i) to address any Release of Hazardous Materials at, from or onto any Real Property owned, leased or operated by any of the Companies or their predecessors in interest as required pursuant to Environmental Law or the requirements of any Governmental Authority; (ii) to address any environmental conditions relating to any Company, any Company's business or to any Real Property, owned, leased or operated by any of the Companies or their predecessors in interest pursuant to any reasonable written request of the Administrative Agent and share with the Administrative Agent all data, information and reports generated or prepared in connection therewith; (iii) to keep any Real Property owned, leased or operated by any of the Companies free and clear of all Liens and other encumbrances pursuant to any Environmental Law, whether due to any act or omission of any Company or any other person; and (iv) to promptly notify the Administrative Agent in writing of: (1) any Release or threatened Release of Hazardous Materials in, on, under, at, from or migrating to any Real Property owned, leased or operated by any of the Companies, except those that are pursuant to and in compliance with the terms and conditions of an Environmental Permit, (2) any non-compliance with, or violation of, any Environmental Law applicable to any Company, any Company's business and any Real Property owned, leased or operated by any of the Companies to the extent that any such noncompliance or violation, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, (3) any Lien pursuant to Environmental Law imposed on any Real Property owned, leased or operated by any of the Companies, (4) any investigation or remediation of any Real Property owned, leased or operated by any of the Companies required to be undertaken pursuant to Environmental Law, and (5) any notice or other communication received by any Company from any person or Governmental Authority relating to any Environmental Claim or liability or potential liability of any Company pursuant to any Environmental Law.

(h) Except where the failure to do so could not reasonably be expected to have a Material Adverse Effect, diligently pursue and use commercially reasonable best efforts to cause any person with an indemnity, contribution or other obligation to any of the Companies relating to compliance with or liability under Environmental Law to satisfy such obligations in full and in a timely manner. To the extent that such person has not fully satisfied or is not diligently undertaking the necessary actions to achieve satisfaction of such obligations, the Companies shall promptly undertake all action necessary to achieve full and timely satisfaction of such obligations.

Section 5.10 **Health Care Matters**. (a) Compliance with Law and Other Obligations. Without limiting or being limited by any other provision of any Loan Document: each Company shall (i) comply in all material respects with all Legal Requirements, including all Health Care Laws; (ii) maintain and comply in all material respects with all Company Health Care Permits, Company Accreditations and Company Reimbursement Approvals; (iii) timely file, or cause to be filed, all Company Regulatory Filings in

accordance with all Legal Requirements; (iv) timely pay all amounts, Taxes, fees and assessments, if any, due and payable in connection with Company Regulatory Filings, except where the failure to make such filings or payments on a timely basis, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect; and (v) timely submit and implement all corrective action plans required to be prepared and submitted in response to any Health Care Audits, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(a) Notices. If any Default has occurred and is then continuing, if requested by the Administrative Agent, furnish to the Administrative Agent, to the maximum extent permitted by applicable Legal Requirements, (i) copies of all Company Regulatory Filings; (ii) copies of all Company Permits, Company Accreditations and Company Reimbursement Approvals, as the same may be renewed or amended; (iii) copies of all Health Care Surveys or Health Care Audits and correspondence related thereto and corrective action plans prepared and submitted in response thereto; and (iv) a report of the status of all recoupments, holdbacks, offsets, vendor holds, denials and appeals of amounts owed pursuant to any Company Reimbursement Approvals, in each case outside the ordinary course of business (and ordinary course of business shall be deemed to exclude recoupments, holdbacks, offsets, denials and vendor holds resulting from, related to or arising out of allegations of fraud or patterns of practices of contracting, billing or claims submission inconsistent with Legal Requirements), all subject to any limitations on disclosure included in applicable law.

Section 5.11 **Additional Collateral; Additional Guarantors**. (a) Subject to this Section 5.11, with respect to any property acquired after the Closing Date by any Loan Party that is intended to be subject to the Lien created by any of the Security Documents but is not so subject (but, in any event, excluding any Equity Interest of a Foreign Subsidiary not required to be pledged pursuant to the last sentence of Section 5.11(b)), promptly (and in any event within 30 days after the acquisition thereof) (i) execute and deliver to the Administrative Agent and the Collateral Agent such amendments or supplements to the relevant Security Documents or such other documents as the Administrative Agent or the Collateral Agent shall deem necessary or advisable to grant to the Collateral Agent, for its benefit and for the benefit of the other Secured Parties, a Lien on such property subject to no Liens other than Permitted Liens, (ii) to the extent requested by the Administrative Agent or the Collateral Agent, deliver opinions of counsel to Borrower in form and substance, and from counsel, reasonably acceptable to the Administrative Agent, and (iii) take all actions necessary to cause such Lien to be duly perfected to the extent required by such Security Documents in accordance with all applicable Legal Requirements, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent or the Collateral Agent. Borrower shall otherwise take such actions and execute and/or deliver to the Collateral Agent such documents as the Administrative Agent or the Collateral Agent shall require to confirm the validity, perfection and priority of the Lien of the Security Documents against such after-acquired properties.

(e) With respect to any person that is or becomes (A) a guarantor of (or otherwise provides, direct or indirect, credit support in respect of) the payment and/or performance of all or any portion of the obligations under or in respect of any or all the Senior Note Documents (a "**Note Guarantor**") or (B) a Subsidiary of a Loan Party after the Closing Date, (y) on the Closing Date or, as applicable, within 3 Business Days after such person becomes a Note Guarantor or (z) on the Closing Date or, as applicable, within 30 days after such person becomes a Subsidiary, to (i) deliver to the Collateral Agent (or its designated bailee or agent) the certificates, if any, representing all of the Equity Interests of such Subsidiary, together with undated stock powers or other appropriate instruments of transfer executed and delivered in blank by a duly authorized Responsible Officer of the holder(s) of such Equity Interests, and all intercompany notes owing from such Subsidiary to any Loan Party together with instruments of transfer executed and delivered in blank by a duly authorized Responsible Officer of such Loan Party and (ii) if subsequent to the Closing

Date, cause such new Subsidiary (A) to execute a Joinder Agreement to become a Subsidiary Guarantor and a Pledgor or, in the case of a Foreign Subsidiary, execute a security document compatible with the laws of such Foreign Subsidiary's jurisdiction in form and substance reasonably satisfactory to the Administrative Agent, and (B) to take all actions necessary or advisable in the opinion of the Administrative Agent or the Collateral Agent to cause the Lien created by the applicable Security Document to be duly perfected to the extent required by such Security Document in accordance with all applicable Legal Requirements, including the filing of financing statements (or equivalent restrictions) in such jurisdictions as may be reasonably requested by the Administrative Agent or the Collateral Agent. Notwithstanding the foregoing, (i) no Foreign Subsidiary shall be required to take the actions specified herein if doing so would constitute an investment of earnings in United States property under Section 956 (or a successor provision) of the Code, which investment would or could reasonably be expected to trigger a material increase in the net income of a United States shareholder of such Subsidiary pursuant to Section 951 (or a successor provision) of the Code, as reasonably determined by Borrower and (ii) no Loan Party shall be required to deliver any Equity Interests in any Foreign Subsidiary under clause (i) of the preceding sentence, except for (A) Voting Stock of any Subsidiary which is a first-tier controlled foreign corporation (as defined in Section 957(a) of the Code) representing no more than 66% of the total voting power of all outstanding Voting Stock of such Subsidiary and (B) 100% of the Equity Interests not constituting Voting Stock of any such Subsidiary. Any such Equity Interests constituting "stock entitled to vote" within the meaning of Treasury Regulation Section 1.956-2(c)(2) shall be treated as Voting Stock for purposes of this Section 5.11(b).

(f) With respect to any person that is or becomes a Subsidiary of a Loan Party after the Closing Date, promptly (and in any event within 30 days after such person becomes a Subsidiary) execute and deliver to the Collateral Agent (or its designated bailee or agent) (i) a counterpart to the Intercompany Note, (ii) a Joinder Agreement (as defined in the Collateral Management Agreement) to the Collateral Management Agreement and (iii) if such Subsidiary is a Loan Party, an endorsement to the Intercompany Note (undated and endorsed in blank) in the form attached thereto, endorsed by such Subsidiary.

(g) Promptly grant to the Collateral Agent (and in any event within 45 days of the acquisition thereof) a security interest in and Mortgage on each Real Property owned in fee by such Loan Party as is acquired by such Loan Party after the Closing Date and that, together with any improvements thereon, individually has a Fair Market Value of at least $2,500,000, as additional security for the Obligations (unless the subject property is already mortgaged to a third party to the extent permitted by Section 6.02). Such Mortgages shall be granted pursuant to documentation reasonably satisfactory in form and substance to the Administrative Agent and the Collateral Agent and shall constitute valid and enforceable perfected first priority Liens subject only to Permitted Liens. Such Loan Party shall promptly deliver to the Collateral Agent (and in any event within 30 days) a Landlord Access Agreement or Bailee Letter, as applicable, with respect to each leased Real Property constituting a Key Location (unless the applicable Loan Party shall have used all commercially reasonable efforts to obtain, but failed to obtain, such Landlord Access Agreements or Bailee Letter, as applicable). The Mortgages or instruments related thereto shall be duly recorded or filed in such manner and in such places as are required by applicable Legal Requirements to establish, perfect, preserve and protect the Liens in favor of the Collateral Agent required to be granted pursuant to the Mortgages and all taxes, fees and other charges payable in connection therewith shall be paid in full. Such Loan Party shall otherwise take such actions and execute and/or deliver to the Collateral Agent such documents as the Administrative Agent or the Collateral Agent shall require to confirm the validity, enforceability, perfection and priority of the Lien of any existing Mortgage or new Mortgage against such after-acquired Real Property (including a Title Policy, a Survey and local counsel opinion (in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent) in respect of such Mortgage) and shall take such actions relating to insurance with respect to such after-acquired Real Property and execute and/or delivery to the Collateral Agent such insurance certificates and other documentation

(including with respect to title and flood insurance), in each case in form and substance reasonably satisfactory to the Administrative Agent and Collateral Agent, as the Collateral Agent shall reasonably request.

Section 5.12 **Security Interests; Further Assurances**. (a) Promptly, upon the reasonable request of the Administrative Agent, the Collateral Agent or any Lender, at Borrower's expense, execute, acknowledge and deliver, or cause the execution, acknowledgment and delivery of, and thereafter register, file or record, or cause to be registered, filed or recorded, in an appropriate governmental office, any document or instrument supplemental to or confirmatory of the Security Documents or otherwise deemed by the Administrative Agent or the Collateral Agent reasonably necessary or desirable for the continued validity, enforceability, perfection and priority of the Liens on the Collateral covered thereby subject to no other Liens except Permitted Liens, or obtain any consents or waivers as may be necessary or appropriate in connection therewith.

(f) Deliver or cause to be delivered to the Administrative Agent and the Collateral Agent from time to time such other documentation, consents, authorizations, approvals and Orders in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent as the Administrative Agent and the Collateral Agent shall reasonably deem necessary or advisable to perfect or maintain the validity, enforceability, perfection and priority of the Liens on the Collateral pursuant to the Security Documents.

(g) Upon the exercise by the Administrative Agent, the Collateral Agent or any Lender of any power, right, privilege or remedy pursuant to any Loan Document which requires any consent, approval, registration, qualification or authorization of any Governmental Authority, execute and deliver all applications, certifications, instruments and other documents and papers that the Administrative Agent, the Collateral Agent or such Lender may require.

(h) If the Administrative Agent, the Collateral Agent or the Required Lenders determine that they are required by any Legal Requirements to have appraisals prepared in respect of the Real Property of any Loan Party constituting Collateral, Borrower shall provide to the Administrative Agent appraisals that satisfy the applicable requirements of the Real Estate Appraisal Reform Amendments of FIRREA and are otherwise in form and substance satisfactory to the Administrative Agent and the Collateral Agent.

(i) In furtherance of the foregoing in this Section 5.12 and Section 5.11, to the maximum extent permitted by applicable Legal Requirements, each Loan Party (A) authorizes each of the Collateral Agent and/or the Administrative Agent to execute any such documentation, consents, authorizations, approvals, Orders, applications, certifications, instruments and other documents and papers in such Loan Party's name and to file such agreements, instruments or other documents in any appropriate filing office, (B) authorizes each of the Collateral Agent and/or the Administrative Agent to file any financing statement (and/or equivalent foreign registration) required hereunder or under any other Loan Document, and any continuation statement or amendment (and/or equivalent foreign registration) with respect thereto, in any appropriate filing office without the signature of such Loan Party, and (C) ratifies the filing of any financing statement (and/or equivalent foreign registration), and any continuation statement or amendment with respect thereto (and/or equivalent foreign registration), filed without the signature of such Loan Party prior to the date hereof.

(j) [Intentionally Omitted].

Section 5.13 **Information Regarding Collateral**. (a) Not effect any change, (i) in any Loan Party's legal name, (ii) in the location of any Loan Party's chief executive office, (iii) in any Loan Party's

organizational structure, (iv) in any Loan Party's Federal Taxpayer Identification Number or organizational identification number, if any (except as may be required by applicable Legal Requirements, in which case, Borrower shall promptly notify the Administrative Agent of such change), or (v) in any Loan Party's jurisdiction of organization (in each case, including by merging with or into any other entity, reorganizing, dissolving, liquidating, reorganizing or organizing in any other jurisdiction), until (A) it shall have given the Collateral Agent and the Administrative Agent not less than 30 days' prior written notice (in the form of an Officers' Certificate) of its intention so to do, clearly describing such change and providing such other information in connection therewith as the Collateral Agent or the Administrative Agent may reasonably request and (B) it shall have taken all action reasonably satisfactory to the Collateral Agent to maintain the validity, enforceability, perfection and priority of the security interest of the Collateral Agent for the benefit of the Secured Parties in the Collateral, if applicable. Each Loan Party shall promptly provide the Collateral Agent with certified Organizational Documents reflecting any of the changes described in the preceding sentence. Each Loan Party shall promptly notify the Collateral Agent of any change in the location of any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral is located (including the establishment of any such new office or facility), other than changes in location to a Mortgaged Property or a leased property subject to a Landlord Access Agreement.

(c) Concurrently with the delivery of financial statements pursuant to Section 5.01(a), deliver to the Administrative Agent and the Collateral Agent a Perfection Certificate Supplement.

Section 5.14 **Maintenance of Corporate Separateness**. Satisfy in all material respects, customary corporate, limited liability company or other like formalities, including the maintenance of organizational and business records. No Company shall take any action, or conduct its affairs in a manner, that is reasonably likely to result in the organizational existence of such Company, or any other Company, being ignored.

Section 5.15 **Borrowing Base Matters**. (a) Offices, Records and Books of Account. Keep each of the Loan Party's principal place of business and chief executive office and the office where it keeps its records concerning the Receivables, Inventory and the Collateral at the address set forth in Section 11.01 or, upon 30 days' prior notice to the Collateral Manager (with a copy to the Administrative Agent), at any other locations in jurisdictions where all actions reasonably requested by the Collateral Manager or otherwise necessary to protect, perfect and maintain the Collateral Agent's interest in the Collateral (including the Receivables and Inventory) and all proceeds thereof have been taken and completed. Each of the Loan Parties shall keep its books and accounts in accordance with GAAP and shall not make any notation on its books and records, including any computer files, that is inconsistent with the collateral assignment of the Receivables and Inventory to the Collateral Agent. The Loan Parties shall maintain and implement administrative and operating procedures (including, without limitation, an ability to recreate records evidencing Receivables, Inventory and related contracts in the event of the destruction of the originals thereof), and keep and maintain all documents, books, records and other information reasonably necessary or advisable for collecting all Receivables and Inventory (including, without limitation, records adequate to permit the daily identification of each Receivable and element of Inventory and all Collections of and adjustments to each existing Receivable and element of Inventory) and for providing the Receivable Information.

(o) Performance and Compliance With Contracts and Credit and Collection Policy. Timely and fully perform and comply, at each of the Loan Party's expense, with all material provisions, covenants and other promises required to be observed by it under the contracts and other documents related to the Receivables, Inventory and other Collateral, and timely and fully comply in all material respects with the Credit and Collection Policy in regard to each Receivables, Inventory and the related contract, and it

shall maintain, at its expense, in full operation each of the Lockbox Accounts and Lockboxes. In addition, each of the Loan Parties shall do nothing, nor suffer or permit any other person, to impede or interfere with the collection by the Collateral Agent or the Collateral Manager of the Receivables and Inventory.

(p) Extension or Amendment of Receivables. Not amend, waive or otherwise permit or agree to any material deviation from the terms or conditions of any Receivable except in accordance with the Credit and Collection Policy.

(q) Change in Business or Credit and Collection Policy. Not make any change in the Credit and Collection Policy or make any change in the character of its business that, in either event, could reasonably be expected to result in a Material Adverse Effect, and it will not make any other material changes in the Credit and Collection Policy without the prior written consent of the Collateral Manager; *provided*, *however*, that if an Event of Default has occurred and is continuing, it will not make any material change in the Credit and Collection Policy.

(r) Audits and Visits. Each Loan Party will, at any time and from time to time during regular business hours as requested by the Collateral Manager, permit the Collateral Manager, or its agents or representatives, upon reasonable notice and without interfering with the Loan Party's businesses or operations and subject to compliance with applicable law in the case of review of plan participant/patient/customer information, or its agents or representatives, (i) on a confidential basis, to examine and make copies of and abstracts from all books, records and documents (including, without limitation, computer tapes and disks) in its possession or under its control relating to Receivables and Inventory including, without limitation, the related contracts, and (ii) to visit its offices and properties for the purpose of examining and auditing such materials described in clause (i) above, and to discuss matters relating to Receivables and Inventory or its performance hereunder or under the contracts with any of its officers or employees having knowledge of such matters. Each Loan Party shall permit the Collateral Manager to have at least one agent or representative physically present in its administrative office during normal business hours to assist it in performing its obligations under the Collateral Management Agreement, including its obligations with respect to the collection of Receivables and Inventory pursuant to the Collateral Management Agreement. Notwithstanding the foregoing, and provided that no Default or Event of Default shall have occurred and be continuing, all visits and examinations shall be scheduled at times mutually convenient to the Collateral Manager and the applicable Loan Party.

(s) Change in Payment Instructions. None of the Loan Parties will terminate any Lockbox or any Lockbox Account, or make any change or replacement in the instructions contained in any invoice, Notice to Obligors or otherwise, or regarding payments with respect to Receivables to be made to the Lockboxes or the Lockbox Accounts except upon the prior and express written consent of the Collateral Manager.

(t) Borrowing Base Additional Information. Each Loan Party will provide or make available to the Collateral Manager (in multiple copies, if requested by the Collateral Manager) (with a copy to the Administrative Agent) the following:

(i) promptly (and in no event later than five Business Days following actual knowledge or receipt thereof) notice (in reasonable detail), of (x) any Lien asserted or claim made against a Receivable, (y) the occurrence of any other event which could reasonably be expected to have a Material Adverse Effect on the value of a Receivable or Inventory or on the Lien of the Collateral Agent in a Receivable or Inventory, or (z) the results of any material cost report,

investigation or similar audit being conducted by any federal, state or county Governmental Entity or its agents or designees;

(ii) on the 25th of each month, a Borrowing Base Certificate calculated as of the last day of the immediately prior calendar month, based on, with respect to Eligible Inventory, the month-end perpetual Inventory reports; and

(iii) such other information respecting the Receivables, Inventory or the other Collateral as the Collateral Manager may from time to time reasonably request.

(u) Notice of Proceedings; Overpayments. Borrower shall promptly notify (in reasonable detail) the Collateral Manager (with a copy to the Administrative Agent) (and modify the next Borrowing Base Certificate to be delivered hereunder) in the event of any action, suit, proceeding, dispute, set-off, deduction, defense or counterclaim involving in excess of $100,000 that is or has been threatened to be asserted by any Obligor with respect to any Receivable or element of Inventory. Each Loan Party shall make any and all payments to the Obligors necessary to prevent the Obligors from offsetting any earlier overpayment to any member of the Companies against any amounts the Obligors owe on any Receivables.

(v) No "Instruments". No Loan Party shall take any action which would allow, result in or cause any Receivable to be evidenced by an "instrument" within the meaning of the UCC of the applicable jurisdiction.

(w) Implementation of New Invoices. Each Loan Party shall take all reasonable steps to ensure that all invoices rendered or dispatched on or after the Closing Date contain only the remittance instructions required under Article II of the Collateral Management Agreement.

Section 5.16 **Net Cash Proceeds**. Direct payment of, or if such arrangements are not practicable, deposit within two Business Days of receipt thereof, all Net Cash Proceeds solely into the Collection Account.

Section 5.17 **Maintenance of Ratings**. Cause the Loans and Borrower's corporate credit to continue to be rated by Standard & Poor's Ratings Group and Moody's Investors Service Inc.

Section 5.18 **Designation as Senior Debt**. Designate all Obligations as "Senior Indebtedness" (or equivalent term) under, and defined in, all Senior Notes and in any other public senior indebtedness and all supplemental indentures thereto.

Section 5.19 **ABDC Intercreditor Agreement**. By no later than earlier to occur of (i) the date of the renewal or extension of the existing agreement with ABDC, and (ii) August 31, 2012, enter into an extension, amendment or new ABDC Intercreditor Agreement that is identical in form and substance to the ABDC Intercreditor Agreement in effect as of the Restatement Date; *provided*, that in connection therewith, Borrower agrees (i) to discuss with Administrative Agent no later than June 30, 2012 the amendments and modifications to the ABDC Intercreditor Agreement proposed by the Administrative Agent, and (ii) to include Administrative Agent in discussions with ABDC and use all commercial efforts to obtain such amendments and modifications thereunder.

Section 5.20 **Post-Restatement Date Deliveries**. Execute and deliver the documents and complete the tasks set forth on Schedule 5.20 in each case within the time limits specified therein.

ARTICLE VI
NEGATIVE COVENANTS

Each Loan Party warrants, covenants and agrees with the Administrative Agent, the Collateral Agent, the Issuing Lender and each Lender that, so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest and premium (if any) on each Loan, all Fees and all other expenses or amounts payable under any Loan Document have been paid in full and all Letters of Credit have been canceled or have expired and all amounts drawn thereunder have been reimbursed in full, no Loan Party will, nor will they cause or permit any Subsidiaries to:

Section 6.01 **Indebtedness**. Incur, create, assume or permit to exist, directly or indirectly, any Indebtedness, except:

(v) Indebtedness incurred under this Agreement and the other Loan Documents;

(w) Indebtedness outstanding on the Restatement Date and listed on Schedule 6.01(b);

(x) Indebtedness under Hedging Obligations that are designed to protect against fluctuations in interest rates entered into in the ordinary course of business and not for speculative purposes; *provided* that if such Hedging Obligations relate to interest rates, (i) such Hedging Obligations relate to payment obligations on Indebtedness otherwise permitted to be incurred by the Loan Documents and (ii) the notional principal amount of such Hedging Obligations at the time incurred does not exceed the principal amount of the Indebtedness to which such Hedging Obligations relate;

(y) Indebtedness resulting from Investments, including loans or advances permitted by Section 6.04;

(z) Indebtedness of Borrower and its Subsidiaries in respect of (i) Capital Lease Obligations under the Cisco Capital Lease and (ii) Purchase Money Obligations and Capital Lease Obligations (excluding the Cisco Capital Lease) in an aggregate amount not to exceed $5,000,000 at any time outstanding;

(aa) Indebtedness in respect of workers' compensation claims, self-insurance obligations, bankers' acceptances and bid, performance or surety bonds issued for the account of any Company in the ordinary course of business, including guarantees or obligations of any Company with respect to letters of credit supporting such workers' compensation claims, self-insurance obligations, bankers' acceptances and bid, performance or surety obligations (in each case other than for an obligation for money borrowed), in an aggregate amount not to exceed $1,000,000 at any time outstanding;

(bb) Contingent Obligations of any Company in respect of Indebtedness otherwise permitted under this Section 6.01 (other than under Section 6.01(n));

(cc) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided*, *however*, that such Indebtedness is extinguished within five Business Days of incurrence;

(dd) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;

(ee) (x) Indebtedness of all Companies in an aggregate principal amount not to exceed $10,000,000 at any time outstanding, and (y) Subordinated Indebtedness of the Companies in an aggregate principal amount not to exceed $20,000,000 at any time outstanding; *provided*, that (1) the documentation with respect to any Indebtedness incurred following the Restatement Date shall provide that the stated maturity date and all mandatory prepayments thereunder not occur prior to the Stated Maturity Date, and (2) prior any incurrence of Indebtedness in excess of $4,000,000, Borrower shall certify to the Administrative Agent it is in compliance with the Pro Forma Condition.

(ff) Indebtedness which represents a refinancing or renewal of any of the Indebtedness described in clauses (b), (c) and (e); *provided* that (A) any such refinancing Indebtedness is in an aggregate principal amount (or aggregate amount, as applicable) not greater than the aggregate principal amount (or aggregate amount, as applicable) of the Indebtedness being renewed or refinanced, *plus* the amount of any premiums required to be paid thereon and reasonable fees and expenses associated therewith, (B) such refinancing Indebtedness has a later or equal final maturity and longer or equal weighted average life to maturity than the Indebtedness being renewed or refinanced, (C) the covenants, events of default, subordination (including lien subordination) and other terms, conditions and provisions thereof (including any guarantees thereof or security documents in respect thereof) shall be, in the aggregate, no less favorable to the Administrative Agent, the Collateral Agent and the Lenders than those contained in the Indebtedness being renewed or refinanced and (D) no Default or Event of Default has occurred or is continuing or would result therefrom;

(gg) unsecured Indebtedness under the Senior Note Documents (including any notes and guarantees issued in exchange therefor in accordance with the registration rights agreement entered into in connection with the issuance of the Senior Notes and Senior Note Guarantees) in an aggregate principal amount not to exceed $225,000,000 at any time outstanding);

(hh) unsecured Indebtedness arising from agreements of Borrower or a Subsidiary providing for indemnification, contribution, earnout, adjustment of purchase price or similar obligations, in each case, incurred or assumed in connection with any Permitted Acquisition, any Debt Issuance or Asset Sale otherwise permitted under this Agreement; and

(ii) Indebtedness of Borrower or a Subsidiary in connection with the acquisition of assets or a new Subsidiary; *provided* that such Indebtedness was incurred by the prior owner of such assets or such Subsidiary prior to such acquisition by Borrower or one of its Subsidiaries and was not incurred in connection with, or in contemplation of, such acquisition by Borrower or one of its Subsidiaries; provided further that the aggregate amount of such Indebtedness, together with any other outstanding Indebtedness incurred pursuant to this clause (n) does not exceed 10,000,000 at any time outstanding; *provided, further*, that (1) the documentation with respect to any Indebtedness incurred following the Restatement Date shall provide that the stated maturity date and all mandatory prepayments thereunder not occur prior to the Stated Maturity Date, and (2) prior any incurrence of Indebtedness in excess of $1,000,000, Borrower shall certify to the Administrative Agent it is in compliance with the Pro Forma Condition.

Section 6.02 **Liens**. Create, incur, assume or permit to exist, directly or indirectly, any Lien on any property now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, except the following (collectively, the "**Permitted Liens**"):

(i) inchoate Liens for taxes, assessments or governmental charges or levies not yet due and payable or delinquent and Liens for taxes, assessments or governmental charges or levies, which (i) are being contested in good faith by appropriate proceedings for which adequate reserves have been established

in accordance with GAAP, which proceedings (or Orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien;

(j) Liens in respect of property of any Company imposed by law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers', warehousemen's, materialmen's, landlords', workmen's, suppliers', repairmen's and mechanics' Liens and other similar Liens arising in the ordinary course of business, and (i) which do not in the aggregate materially detract from the value of the property of the Companies, taken as a whole, or the Loan Parties, taken as a whole, and do not materially impair the use thereof in the operation of the business of the Companies, taken as a whole, or the Loan Parties, taken as a whole, and (ii) which, if they secure obligations that are then due and unpaid, are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings (or Orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien;

(k) any Lien in existence on the Restatement Date and set forth on Schedule 6.02(c) and any Lien granted as a replacement or substitute therefor; *provided* that any such replacement or substitute Lien (i) except as permitted by clause (A) of the proviso to Section 6.01(k), does not secure an aggregate amount of Indebtedness or other obligations, if any, greater than that secured on the Restatement Date and (ii) does not encumber any property other than the property subject thereto on the Restatement Date (any such Lien, a "**Pre-Restatement Lien**");

(l) easements, rights-of-way, restrictions (including zoning restrictions), covenants, licenses, encroachments, protrusions and other similar charges or encumbrances, and minor title deficiencies on or with respect to any Real Property, in each case whether now or hereafter in existence, not (i) securing Indebtedness, (ii) individually or in the aggregate materially impairing the value or marketability of such Real Property or (iii) individually or in the aggregate materially interfering with the ordinary conduct of the business of the Companies at such Real Property;

(m) Liens arising out of judgments, attachments or awards not resulting in a Default and in respect of which such Company shall in good faith be prosecuting an appeal or proceedings for review in respect of which there shall be secured a subsisting stay of execution pending such appeal or proceedings;

(n) Liens (other than any Lien imposed by ERISA) (x) imposed by law or deposits made in connection therewith in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security legislation, (y) incurred in the ordinary course of business to secure the performance of tenders, statutory obligations (other than excise taxes), surety, stay, customs and appeal bonds, statutory bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of Indebtedness) or (z) arising by virtue of deposits made in the ordinary course of business to secure liability for premiums to insurance carriers; *provided* that (i) with respect to clauses (x), (y) and (z) of this paragraph (f), such Liens are for amounts not yet due and payable or delinquent or, to the extent such amounts are so due and payable, such amounts are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings or Orders entered in connection with such proceedings have the effect of preventing the forfeiture or sale of the property subject to any such Lien, and (ii) to the extent such Liens are not imposed by Legal Requirements, such Liens shall in no event encumber any property other than cash and Cash Equivalents;

(o) Leases of the properties of any Company, and the rights of ordinary-course lessees described in Section 9-321 of the UCC, in each case entered into in the ordinary course of such Company's

business so long as such Leases and rights do not, individually or in the aggregate, (i) interfere in any material respect with the ordinary conduct of the business of any Company or (ii) materially impair the use (for its intended purposes) or the value of the property subject thereto;

(p) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by any Company in the ordinary course of business in accordance with the past practices of such Company;

(q) Liens securing Indebtedness incurred pursuant to Section 6.01(e), *provided* that (i) any such Liens attach only to the property (including proceeds thereof) being financed pursuant to such Indebtedness and (ii) do not encumber any other property of any Company;

(r) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by any Company, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; *provided* that, unless such Liens are non-consensual and arise by operation of applicable Legal Requirements, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(s) Liens on property of a person existing at the time such person is acquired or merged with or into or consolidated with any Company to the extent permitted hereunder; *provided* that such Liens (i) do not extend to property not subject to such Liens at the time of such acquisition, merger or consolidation (other than proceeds thereof and improvements thereon), (ii) are no more favorable to the lienholders than such existing Liens (iii) are not created in anticipation or contemplation of such acquisition, merger or consolidation; (iv) no such Liens shall cover Accounts or Inventory of any kind or other Collateral of any Loan Party to the extent of the Lien existing prior to the effective date of such merger, acquisition or consolidation, except to the extent the subject of an intercreditor agreement acceptable to the Administrative Agent;

(t) Liens granted pursuant to the Security Documents to secure the Obligations;

(u) licenses of Intellectual Property granted by any Company in the ordinary course of business and not interfering in any material respect with the ordinary conduct of business of the Companies;

(v) the filing of UCC financing statements solely as a precautionary measure in connection with operating leases or consignment of goods;

(w) Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the UCC covering only the items being collected upon;

(x) Liens granted by a Company in favor of a Loan Party in respect of Indebtedness owed by such Company to such Loan Party; *provided* that such Indebtedness is evidenced by the Intercompany Note; and

(y) the ABDC Lien (only to the extent subject to the ABDC Intercreditor Agreement) and (y) a Lien of a supplier to Borrower or a Subsidiary on Inventory (to the extent supplied by such supplier) and related Accounts and the products and proceeds thereof, only to the extent that such supplier has entered into an intercreditor agreement with the Collateral Agent (for the benefit of the Secured Parties) and the

Loan Parties in the form of the Supplier Intercreditor Agreement (with such amendments, supplements and/or modifications thereto as may be reasonably acceptable to the Administrative Agent).

Section 6.03 **Sale and Leaseback Transactions**. Enter into any arrangement, directly or indirectly, with any person whereby it shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property which it intends to use for substantially the same purpose or purposes as the property being sold or transferred (a "**Sale and Leaseback Transaction**").

Section 6.04 **Investments, Loans and Advances**. Directly or indirectly, lend money or credit (by way of guarantee, assumption of debt or otherwise) or make advances to any person, or purchase or acquire any stock, bonds, notes, debentures or other obligations or securities of, or any other interest in, or make any capital contribution to, any other person, or purchase or own a futures contract or otherwise become liable for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract (all of the foregoing, collectively, "**Investments**"), except that the following shall be permitted:

(e) [Intentionally Omitted];

(f) Investments outstanding on the Restatement Date and identified on Schedule 6.04(b);

(g) the Companies may (i) acquire, hold and dispose of accounts receivable owing to any of them if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary terms, (ii) invest in, acquire and hold cash and Cash Equivalents, (iii) endorse negotiable instruments held for collection in the ordinary course of business or (iv) make lease, utility and other similar deposits in the ordinary course of business;

(h) Hedging Obligations permitted pursuant to Section 6.01(c);

(i) loans and advances to directors, employees and officers of Borrower and the Subsidiaries for *bona fide* business purposes, in aggregate amount not to exceed $1,000,000 at any time outstanding; *provided* that no loans in violation of the Sarbanes-Oxley Act (including Section 402 thereof) shall be permitted hereunder;

(j) Investments (i) by Borrower in any Subsidiary Guarantor, including any entity that becomes a Subsidiary Guarantor in a Permitted Acquisition, (ii) by any Company in Borrower or any Subsidiary Guarantor and (iii) by a Subsidiary of Borrower that is not a Subsidiary Guarantor in any other Subsidiary of Borrower that is not a Subsidiary Guarantor; *provided* that any Investment in the form of a loan or advance shall be evidenced by the Intercompany Note;

(k) Investments in securities of trade creditors or customers in the ordinary course of business and consistent with such Company's past practices that are received in settlement of *bona fide* disputes or pursuant to any plan of reorganization or liquidation or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers;

(l) mergers, consolidations and other transactions in compliance with Section 6.05;

(m) Investments made by Borrower or any Subsidiary as a result of consideration received in connection with an Asset Sale made in compliance with Section 6.06;

(n) Acquisitions of property in compliance with Section 6.07;

(o) Dividends in compliance with Section 6.08;

(p) [Intentionally Omitted];

(q) Guarantees by Borrower or any Subsidiary of Indebtedness of Borrower or a Subsidiary of Indebtedness otherwise permitted under Section 6.01 (other than under Section 6.01(n)); and

(r) Investments made by Borrower or any Subsidiary in any Permitted Joint Venture on or after the date hereof in an aggregate amount not to exceed $5,000,000 (for each such Investment and related series of Investments) and $15,000,000 in the aggregate; *provided*, that (x) if permitted under the documents related to such Permitted Joint Venture, the equity held by any Company, or (y) if not permitted, all proceeds and distributions payable to Borrower or any Subsidiary with respect to such Permitted Joint Venture, in either case, shall be pledged to the Administrative Agent in a manner reasonably acceptable to the Administrative Agent.

Section 6.05 **Mergers and Consolidations**. Wind up, liquidate or dissolve its affairs or enter into any transaction of merger or consolidation (or agree to do any of the foregoing at any future time), except that the following shall be permitted:

(e) [Intentionally Omitted];

(f) dispositions of property in compliance with Section 6.06;

(g) any solvent Company (other than Borrower) may merge or consolidate with or into Borrower or any Subsidiary Guarantor (as long as Borrower or a Subsidiary Guarantor is the surviving person in such merger or consolidation); *provided* that the Lien on and security interest in such property granted or to be granted in favor of the Collateral Agent under the Security Documents shall be maintained or created in accordance with the provisions of Sections 5.11 and 5.12, as applicable;

(h) any Subsidiary may dissolve, liquidate or wind up its affairs at any time if such dissolution, liquidation or winding up is not disadvantageous to any Agent or Lender in any material respect; and

(i) [Intentionally Omitted].

To the extent the requisite Lenders under Section 11.02(b) waive the provisions of this Section 6.05 with respect to the sale of any Collateral, or any Collateral is sold as permitted by this Section 6.05, such Collateral (unless sold to a Company or any Affiliate thereof) shall be sold free and clear of the Liens created by the Security Documents, and, so long as Borrower shall have previously provided to the Collateral Agent and the Administrative Agent such certifications or documents as the Collateral Agent and/or the Administrative Agent shall reasonably request in order to demonstrate compliance with this Section 6.05, the Collateral Agent shall take all actions it deems appropriate in order to effect the foregoing.

Section 6.06 **Asset Sales**. Effect any disposition of any property, or agree to effect any of the foregoing, except that the following shall be permitted:

(d) dispositions of worn out, obsolete or surplus property by Borrower or any of its Subsidiaries in the ordinary course of business and the abandonment or other disposition of Intellectual Property that is, in the reasonable good faith judgment of Borrower or such Subsidiary, no longer economically practicable to maintain or useful in the conduct of the business of the Companies taken as a whole;

(e) other dispositions of property; *provided* that (i) the aggregate consideration received in respect of all dispositions of property pursuant to this clause (b) shall not exceed $2,000,000 in any four consecutive fiscal quarters of Borrower, but, in any event, shall not exceed $500,000 with respect to any single disposition of property, (ii) such dispositions of property are made for Fair Market Value, and (iii) at least 80% of the consideration payable in respect of such disposition of property is in the form of cash or Cash Equivalents (and for purposes of making the foregoing determination, each of the following shall be deemed "cash": (1) any liabilities, as shown on the then most recent balance sheet of Borrower or any Subsidiary (other than contingent liabilities, liabilities that are by their terms subordinated to the Obligations or impaired liabilities) that are assumed by the transferee of any such assets pursuant to a customary novation agreement that releases Borrower and Subsidiaries from all liability thereunder or with respect thereto; and (2) any securities, notes or other obligations received by Borrower or such Subsidiary from the transferee that are converted to cash within thirty (30) days after receipt, to the extent of the cash received in that conversion);

(f) leases, subleases, licenses or sublicenses of real or personal property (including intellectual property or other general intangibles) to third parties in the ordinary course of business and in accordance with the applicable Security Documents;

(g) [Intentionally Omitted];

(h) Permitted Liens in compliance with Section 6.02;

(i) Investments in compliance with Section 6.04;

(j) dispositions related to mergers, consolidations and other transactions in compliance with Section 6.05;

(k) Dividends in compliance with Section 6.08;

(l) sales of inventory or rental equipment fixed assets in the ordinary course of business and dispositions of cash and Cash Equivalents in the ordinary course of business; and

(m) any disposition of property that constitutes a Casualty Event.

To the extent the requisite Lenders under Section 11.02(b) waive the provisions of this Section 6.06, with respect to the sale of any Collateral, or any Collateral is sold as permitted by this Section 6.06, such Collateral (unless sold to a Company or any Affiliate thereof) shall be sold free and clear of the Liens created by the Security Documents, and, so long as Borrower shall have previously provided to the Collateral Agent and the Administrative Agent such certifications or documents as the Collateral Agent and/or the Administrative Agent shall reasonably request in order to demonstrate compliance with this Section 6.06, the Collateral Agent shall take all actions it deems appropriate in order to effect the foregoing.

Section 6.07 **Acquisitions**. Purchase or otherwise acquire (in one or a series of related transactions) (i) all or any substantial part of the property (whether tangible or intangible) of any person

(ii) any business unit or division of any person or (iii) in excess of 50% of the Equity Interests of such person (or agree to do any of the foregoing at any future time), except that the following shall be permitted:

(b) Investments in compliance with Section 6.04;

(c) Capital Expenditures by Borrower and the Subsidiaries shall be permitted;

(d) purchases and other acquisitions of inventory, materials, equipment and intangible property in the ordinary course of business;

(e) leases or licenses of real or personal property in the ordinary course of business and in accordance with the applicable Security Documents;

(f) the Acquisition as contemplated by the Acquisition Documents;

(g) Permitted Acquisitions;

(h) mergers, consolidations and other transactions in compliance with Section 6.05; and

(i) Dividends in compliance with Section 6.08;

provided that the Lien on and security interest in such property granted or to be granted in favor of the Collateral Agent under the Security Documents shall be maintained or created in accordance with the provisions of Section 5.11 or Section 5.12, as applicable.

Section 6.08 **Dividends**. Authorize, declare or pay, directly or indirectly, any Dividends with respect to any Company, except for the following:

(i) Dividends by any Company that is a Subsidiary of Borrower to Borrower or any Subsidiary Guarantor;

(j) Dividends made solely in Equity Interests (other than Disqualified Capital Stock); *provided*, that no Default or Event of Default has occurred and is continuing prior to, or will occur immediately after, such Dividend;

(k) Dividends to the extent constituting the non-cash repurchase of Equity Interests of Borrower deemed to occur upon the exercise of stock options, warrants or other convertible or exchangeable securities to the extent such Equity Interests represent a portion of the exercise price of those securities, in each case, pursuant to Borrower's equity-based compensation or equity-based incentive plan; and

(l) Dividends made in cash in lieu of the issuance of fractional share in connection with the exercise of warrants, options or other securities convertible into, or exchangeable for, Equity Interests of Borrower, in each case, pursuant to Borrower's equity-based compensation or equity-based incentive plan not to exceed $100,000 in the aggregate for any twelve-month period.

Section 6.09 **Transactions with Affiliates**. Enter into, directly or indirectly, any transaction or series of related transactions, whether or not in the ordinary course of business, with any Affiliate of any Company (other than between or among Borrower and one or more Subsidiary Guarantors), other than on

terms and conditions at least as favorable to such Company as would reasonably be obtained by such Company at that time in a comparable arm's-length transaction with a person other than an Affiliate, except that the following shall be permitted:

(b) Dividends permitted by Section 6.08;

(c) Investments, including loans and advances, permitted by Sections 6.04(e) and (f);

(d) reasonable and customary director, officer and employee compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans) and indemnification arrangements, in each case approved by the Board of Directors of the applicable Company, including the employment agreements listed on Schedule 6.09(c) and the payment of salaries and other compensation thereunder;

(e) [Intentionally Omitted];

(f) transactions between or among Borrower and its Subsidiaries to the extent permitted by Sections 6.01(b) and (g), Section 6.05 (other than pursuant to paragraph (b) thereof) and Section 6.06(g); and

(g) any other agreement or arrangement as in effect on the date of this Agreement and described on Schedule 3.09(i), and any amendment or modification thereto, and the performance of obligations thereunder, so long as such amendment or modification is not more disadvantageous to, or otherwise adverse to the interests of, the Administrative Agent and the Lenders than those in effect on the date of this Agreement.

Section 6.10 **Financial Covenants.**

(h) Minimum Liquidity. Permit at any time the aggregate amount of Unrestricted Domestic Cash and Cash Equivalents and the undrawn and available portion of the Revolving Commitments to equal less than $20,000,000.

(i) Minimum Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio, as of the last day of any Test Period ending on the date set forth in the table below, to be less than 1.20 to 1.0.

(j) Accounts Receivable Turnover. Permit Accounts Receivable Turnover, calculated as of the end of each Test Period, to exceed 75 days.

Section 6.11 **Prepayments of Other Indebtedness; Modifications of Organizational Documents, Acquisition and Certain Other Documents, etc.** Directly or indirectly:

(k) make or offer to make (or give any notice in respect thereof) any voluntary or optional payment or prepayment on or redemption or acquisition for value of, or any prepayment, repurchase or redemption, retirement, defeasance as a result of any asset sale, change of control or similar event of, any Senior Notes or Subordinated Indebtedness; *provided* that, so long as no Default or Event of Default has occurred and is then continuing or would result therefrom, Exchange Senior Notes may be issued to the extent contemplated by the definition of Senior Notes and to the extent consistent with the definition of Exchange Senior Notes;

(l) amend, modify, supplement or waive, or permit the amendment, modification supplement or waiver of, any provision of any Transaction Document in any manner that is, or could reasonably be expected to be, adverse in any material respect to the interests of any Agent or Lender; or

(m) terminate, amend, modify (including electing to treat any Pledged Interests (as defined in the Security Agreement) as a "security" under Section 8-103 of the UCC) or change any of its Organizational Documents (including by the filing or modification of any certificate of designation) or any agreement to which it is a party with respect to its Equity Interests (including any stockholders' agreement), or enter into any new agreement with respect to its Equity Interests, other than any such amendments, modifications or changes or such new agreements which are not, and could not reasonably be expected to be, adverse in any material respect to the interests of any Agent or Lender.

Section 6.12 **Limitation on Certain Restrictions on Subsidiaries**. Directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance, restriction or condition on the ability of any Subsidiary to (i) pay Dividends or make any other distributions on its Equity Interests or any other interest or participation in its profits owned by any Company, or pay any Indebtedness owed to any Company, (ii) make loans or advances to any Company or (iii) transfer any of its properties to any Company, except for such encumbrances, restrictions or conditions existing under or by reason of:

(d) applicable mandatory Legal Requirements;

(e) (x) this Agreement and the other Loan Documents and (y) the Senior Note Documents;

(f) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of a Subsidiary;

(g) customary provisions restricting assignment of any agreement entered into by a Subsidiary in the ordinary course of business;

(h) customary restrictions and conditions contained in any agreement relating to the sale of any property pending the consummation of such sale; *provided* that (i) such restrictions and conditions apply only to the property to be sold, and (ii) such sale is permitted hereunder;

(i) any agreement in effect at the time such Subsidiary becomes a Subsidiary of Borrower, so long as such agreement was not entered into in connection with or in contemplation of such person becoming a Subsidiary of Borrower; or

(j) any encumbrances or restrictions imposed by any amendments or refinancings that are otherwise permitted by the Loan Documents of the contracts, instruments or obligations referred to in clause (f) above; *provided* that such amendments or refinancings are no more materially restrictive with respect to such encumbrances and restrictions than those prior to such amendment or refinancing.

Section 6.13 **Limitation on Issuance of Capital Stock**. (a) With respect to Borrower, issue any Equity Interest that is Disqualified Capital Stock.

(e) With respect to any Subsidiary of Borrower, issue any Equity Interest (including by way of sales of treasury stock) or any options or warrants to purchase, or securities convertible into, any Equity Interest, except (i) for stock splits, stock dividends and additional issuances of Equity Interests which

do not decrease the percentage ownership of any Subsidiaries or Borrower in any class of the Equity Interests of such Subsidiary; and (ii) Subsidiaries of Borrower formed or acquired after the Restatement Date in accordance with Section 6.14 may issue Equity Interests to Borrower or the Wholly Owned Subsidiary which is to own such Equity Interests. All Equity Interests issued in accordance with this Section 6.13(b) shall, to the extent required by Section 5.11 and 5.12 or any Security Document, be delivered to the Collateral Agent for pledge pursuant to the applicable Security Document.

Section 6.14 **Limitation on Creation of Subsidiaries**. Establish, create or acquire any additional Subsidiaries without the prior written consent of the Required Lenders; *provided* that, without such consent, Borrower may (i) establish or create one or more Wholly Owned Subsidiaries, (ii) establish, create or acquire one or more Subsidiaries in connection with an Investment made pursuant to Section 6.04(f), or (iii) acquire one or more Subsidiaries in connection with a Permitted Acquisition or another Investment permitted hereunder, so long as, in each case, Section 5.11 shall be complied with.

Section 6.15 **Business**. Engage (directly or indirectly) in any businesses other than those businesses in which Borrower and its Subsidiaries are engaged on the Restatement Date (or which are ancillary thereto, reasonably related thereto or are reasonable extensions thereof or complementary thereto).

Section 6.16 **Limitation on Accounting Changes**. Make or permit, any material change in accounting policies or reporting practices, without the consent of the Required Lenders, which consent shall not be unreasonably withheld, except changes that are required by GAAP.

Section 6.17 **Fiscal Periods**. Change its fiscal year-end and fiscal quarter-ends to dates other than December 31 and March 31, June 30 and September 30, respectively.

Section 6.18 **No Further Negative Pledge**. Enter into any agreement, instrument, deed or lease which prohibits or limits the ability of any Company to create, incur, assume or suffer to exist any Lien upon any of its properties or revenues, whether now owned or hereafter acquired, or which requires the grant of any Lien for an obligation if a Lien is granted for another obligation, except the following: (1) this Agreement and the other Loan Documents and the Senior Note Documents; (2) covenants in documents creating Liens permitted by Section 6.02 prohibiting further Liens on the properties encumbered thereby; and (3) any prohibition or limitation that (a) exists pursuant to applicable Legal Requirements, or (b) consists of customary restrictions and conditions contained in any agreement relating to the sale or other disposition of any property pending the consummation of such sale or other disposition; *provided* that (i) such restrictions apply only to such property, and (ii) such sale or other disposition is permitted hereunder, or (c) restricts subletting or assignment of any lease governing a leasehold interest of Borrower or one of its Subsidiaries.

Section 6.19 **Anti-Terrorism Law; Anti-Money Laundering**. (a) Directly or indirectly, (i) knowingly conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in Section 3.23, (ii) knowingly deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or any other Anti-Terrorism Law, or (iii) knowingly engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law (and the Loan Parties shall deliver to the Lenders any certification or other evidence requested from time to time by any Lender in its reasonable discretion, confirming the Companies' compliance with this Section 6.19).

(a) Cause or permit any of the funds of such Loan Party that are used to repay the Credit Extensions to be derived from any unlawful activity with the result that the making of the Credit Extensions would be in violation of Legal Requirements.

Section 6.20 **Embargoed Person**. Cause or permit (a) any of the funds or properties of the Loan Parties that are used to repay the Loans or other Credit Extensions to constitute property of, or be beneficially owned directly or indirectly by, any person subject to sanctions or trade restrictions under United States law ("**Embargoed Person**" or "**Embargoed Persons**") that is identified on (1) the "List of Specially Designated Nationals and Blocked Persons" (the "**SDN List**") maintained by OFAC and/or on any other similar list ("**Other List**") maintained by OFAC pursuant to any authorizing statute including the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 *et seq*., The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq*., and any Executive Order or regulation promulgated thereunder, with the result that the investment in the Loan Parties (whether directly or indirectly) is prohibited by applicable Legal Requirements, or the Loans or other Credit Extensions made by the Lenders and the Issuing Lender would be in violation of Legal Requirements, or (2) the Executive Order, any related enabling legislation or any other similar executive orders (collectively, "**Executive Orders**"), or (b) any Embargoed Person to have any direct or indirect interest, of any nature whatsoever in the Loan Parties, with the result that the investment in the Loan Parties (whether directly or indirectly) is prohibited by applicable Legal Requirements or the Credit Extensions are in violation of applicable Legal Requirements.

Section 6.21 **Health Care Matters**. Without limiting or being limited by any other provision of any Loan Document, no Company shall (i) fail to maintain in effect all Company Health Care Permits, Company Accreditations and Company Reimbursement Approvals, to the extent such failure would result in a Material Adverse Effect, or (ii) engage in any activity that constitutes or, with the giving of notice, the passage of time, or both, would (a) result in a violation of any Company Health Care Permit, Company Accreditation or Company Reimbursement Approval or any Health Care Laws, unless such activity could not reasonably be expected to result in a Material Adverse Effect, or (b) cause any Company not to be in substantial compliance with any Health Care Laws.

ARTICLE VII
GUARANTEE

Section 7.01 **The Guarantee**. The Subsidiary Guarantors hereby, jointly and severally, guarantee, and hereby confirms, ratifies and restates on the Restatement Date their joint and several guarantee, as primary obligors and not as a sureties to each Secured Party and their respective successors and assigns, the prompt payment and performance in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the principal of and interest (including any interest, fees, costs or charges that would accrue but for the provisions of the Title 11 of the United States Code after any bankruptcy or insolvency petition under Title 11 of the United States Code) on the Loans made by the Lenders to, and the Notes held by each Lender of, Borrower, and all other Obligations from time to time owing to the Secured Parties by any Loan Party under any Loan Document in each case strictly in accordance with the terms thereof (such obligations being herein collectively called the "**Guaranteed Obligations**"). The Subsidiary Guarantors hereby jointly and severally agree that if Borrower or other Subsidiary Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same in cash, 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.

Section 7.02 **Obligations Unconditional**. The obligations of the Subsidiary Guarantors under Section 7.01 shall constitute a guaranty of payment and performance and not of collection and to the fullest extent permitted by applicable Legal Requirements, are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations under this Agreement, the Notes, if any, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Subsidiary Guarantor (except for payment in full). 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, irrevocable and unconditional under any and all circumstances as described above:

(i) 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;

(ii) any of the acts mentioned in any of the provisions of this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted;

(iii) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect (including in each case, without limitation, the amendment and restatement of this Agreement as of the Restatement Date) 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

(iv) any Lien or security interest granted to, or in favor of, any Secured Party as security for any of the Guaranteed Obligations shall fail to be valid, perfected or to have the priority required under the Loan Documents.

The Subsidiary Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against Borrower or any Subsidiary Guarantor under this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein, or against any other person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Subsidiary Guarantors waive any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations (including, without limitation, the amendment and restatement of this Agreement as of the Restatement Date) and notice of or proof of reliance by any Secured Party upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment and performance without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by the Secured Parties, and the obligations and liabilities of the Subsidiary Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other person at any time of any right or remedy against Borrower or against any other person which may be or become liable in respect of all or any part of the Guaranteed Obligations

or against any collateral security or guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Subsidiary Guarantors and their respective successors and assigns, and shall inure to the benefit of the Secured Parties, and their respective successors and assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding.

Section 7.03 **Reinstatement**. The obligations of the Subsidiary Guarantors under this Article VII shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of Borrower or other Loan Party 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.

Section 7.04 **Subrogation; Subordination**. Each Subsidiary Guarantor hereby agrees that until the indefeasible payment and satisfaction in full in cash of all Guaranteed Obligations and the expiration and termination of the Commitments of the Lenders under this Agreement it shall waive any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in Section 7.01, whether by subrogation or otherwise, against Borrower or any other Subsidiary Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. Any Indebtedness of any Loan Party permitted pursuant to Section 6.04(f) shall be subordinated to such Loan Party's Obligations in the manner set forth in the Intercompany Note evidencing such Indebtedness.

Section 7.05 **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 other Loan Documents may be declared to be forthwith due and payable as provided in Article VIII (and shall be deemed to have become automatically due and payable in the circumstances provided in Article VIII) for purposes of Section 7.01, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against Borrower (but not such Subsidiary Guarantor) 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 7.01.

Section 7.06 **Instrument for the Payment of Money**. Each Subsidiary Guarantor hereby acknowledges that the guarantee in this Article VIII constitutes an instrument for the payment of money, and consents and agrees that any Lender or Agent, at its sole option, in the event of a dispute by such Subsidiary Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

Section 7.07 **Continuing Guarantee**. The guarantee in this Article VII is a continuing guarantee of payment and performance, and shall apply to all Guaranteed Obligations whenever arising.

Section 7.08 **General Limitation on Guarantee Obligations**. In any action or proceeding involving any state corporate limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other Legal Requirement affecting the rights of creditors generally, if the obligations of any Subsidiary Guarantor under Section 7.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 7.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Subsidiary Guarantor, any Loan Party or any other person, be automatically limited and reduced to the highest amount

that is valid and enforceable, not void or voidable and not subordinated to the claims of other creditors as determined in such action or proceeding.

Section 7.09 **[Intentionally Omitted]**.

Section 7.10 **Right of Contribution**. (a) The Loan Parties hereby agree as among themselves that, if any Loan Party shall make an Excess Payment (as defined below), such Loan Party shall have a right of contribution from each other Loan Party in an amount equal to such other Loan Party's Contribution Share (as defined below) of such Excess Payment. The payment obligations of any Loan Party under this Section 7.10 shall be subordinate and subject in right of payment to the Obligations until such time as the Obligations have been paid in full in cash and all Commitments have terminated or expired, and none of the Loan Parties shall exercise any right or remedy under this Section 7.10 against any other Loan Party until such time as all Obligations have been performed and paid in full in cash and all Commitments have been terminated. For purposes of this Section 7.10, (a) "**Excess Payment**" shall mean the amount paid by any Loan Party in excess of its Pro Rata Share of any Obligations; (b) "**Pro Rata Share**" shall mean, for any Loan Party in respect of any payment of the Obligations, the ratio (expressed as a percentage) as of the date of such payment of Obligations of (i) the amount by which the aggregate present fair salable value of all of its assets and properties exceeds the amount of all debts and liabilities of such Loan Party (including contingent, subordinated, un-matured, and un-liquidated liabilities, but excluding the Obligations of such Loan Party) to (ii) the amount by which the aggregate present fair salable value of its assets and other properties of all Loan Parties exceeds the amount of all of the debts and liabilities (including contingent, subordinated, un-matured, and un-liquidated liabilities, but excluding the Obligations of all Loan Parties) of the Loan Parties; and (c) "**Contribution Share**" shall mean, for any Loan Party in respect of any Excess Payment made by any other Loan Party, the ratio (expressed as a percentage) as of the date of such Excess Payment of (i) the amount by which the aggregate present fair salable value of all of its assets and properties exceeds the amount of all debts and liabilities of such Loan Party (including contingent, subordinated, un-matured, and un-liquidated liabilities, but excluding the Obligations of such Loan Party) to (ii) the amount by which the aggregate present fair salable value of all assets and other properties of the Loan Parties other than the maker of such Excess Payment exceeds the amount of all of the debts and liabilities (including contingent, subordinated, un-matured, and un-liquidated liabilities, but excluding the Obligations of the Loan Parties) of the Loan Parties other than the maker of such Excess Payment. Nothing in this Section 7.10 shall require any Loan Party to pay its Contribution Share of any Excess Payment in the absence of a demand therefor by the Loan Party that has made the Excess Payment. Without limiting the foregoing in any manner, it is the intent of the parties hereto that as of any date of determination, no Contribution Amount of any Loan Party shall be greater than the maximum amount of the claim which could then be recovered from such Loan Party under this Section 7.10 without rendering such claim voidable or avoidable under Section 548 of Chapter 11 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law.

(n) This Section 7.10 is intended only to define the relative rights of the Loan Parties and nothing set forth in this Section 7.10 is intended to or shall impair the obligations of the Loan Parties, jointly and severally, to pay any amounts and perform any obligations as and when the same shall become due and payable or required to be performed in accordance with the terms of this Agreement or any other Loan Document. Nothing contained in this Section 7.10 shall limit the liability of Borrower to pay the Loans and other Credit Extensions made to Borrower and accrued interest, Fees and expenses with respect thereto for which Borrower shall be primarily liable.

(o) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Loan Parties to which such contribution and indemnification is owing.

(p) The rights of any indemnified Loan Party against the other Loan Parties under this Section 7.10 shall be exercisable upon, but shall not be exercisable prior to, the full and indefeasible payment of the Obligations and termination or expiration of the Commitments under the Loan Documents.

ARTICLE VIII
EVENTS OF DEFAULT

Section 8.01 **Events of Default**. Upon the occurrence and during the continuance of any of the following events (each, an "**Event of Default**"):

(j) default shall be made in the payment of any principal of any Loan or any Reimbursement Obligation when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for mandatory prepayment thereof or by acceleration thereof or otherwise;

(k) default shall be made in the payment of any interest on any Credit Extension or any Fee or any other amount (other than an amount referred to in paragraph (a) above) due under any Loan Document, when and as the same shall become due and payable, whether at the due date thereof (including an Interest Payment Date) or at a date fixed for prepayment (whether voluntary or mandatory) or by acceleration or demand thereof or otherwise, and such default shall continue unremedied for a period of three Business Days or a Borrowing Base Deficiency shall have occurred and be continuing for a period equal to or exceeding five Business Days;

(l) any representation or warranty made or deemed made in or in connection with any Loan Document or the Borrowings or issuances of Letters of Credit hereunder, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished;

(m) default shall be made in the due observance or performance by any Company of any covenant, condition or agreement contained in Section 5.01(a), 5.01(b), 5.02 (other than clause (a) thereof), 5.03(a), 5.08, 5.11 or 5.16 or in Article VI;

(n) default shall be made in the due observance or performance by any Company of any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraphs (a), (b) or (d) immediately above) and such default shall continue unremedied or shall not be waived for a period of 30 days (or (A) five days in the case of the Fee Letter or (B) ten days in the case of any covenant, condition or agreement contained in Section 5.01 (other than clause (a) or clause (b) thereof)) or Section 5.04 after the occurrence thereof;

(o) any Company shall (i) fail to pay any principal or interest, regardless of amount, due in respect of any Indebtedness (other than the Obligations), when and as the same shall become due and payable beyond any applicable grace period, or (ii) fail to observe or perform any other term, covenant, condition or agreement contained in any agreement or instrument evidencing or governing any such Indebtedness if the effect of any failure referred to in this clause (ii) is to cause, or to permit the holder or holders of such Indebtedness or a trustee or other representative on its or their behalf (with or without the giving of notice, the lapse of time or both) to cause, such Indebtedness to become due prior to its stated maturity or become subject to a mandatory offer to purchase by the obligor; *provided* that it shall not constitute an Event of Default pursuant to this paragraph (f) unless the aggregate amount of all such Indebtedness

referred to in clauses (i) and (ii) individually exceeds $2,500,000 at any one time (*provided* that, in the case of Hedging Obligations, the notional amount thereof shall be counted for this purpose);

(p) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of any Company or of a substantial part of the property of any Company, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar Legal Requirement; (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Company or for a substantial part of the property of any Company; or (iii) the winding-up or liquidation of any Company; and such proceeding or petition shall continue undismissed for 60 days or an Order approving or ordering any of the foregoing shall be entered;

(q) any Company shall (i) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar Legal Requirement; (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (g) above; (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Company or for a substantial part of the property of any Company; (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding; (v) make a general assignment for the benefit of creditors; (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due; (vii) except as permitted in Section 6.06, wind up or liquidate; or (viii) take any action for the purpose of effecting any of the foregoing;

(r) one or more Orders for the payment of money in an aggregate amount in excess of $2,500,000 (to the extent not adequately covered by insurance in respect of which a solvent and unaffiliated insurance company has acknowledged coverage in writing) shall be rendered against any Company or any combination thereof and the same shall remain undischarged, unvacated or unbonded for a period of 90 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon properties of any Company to enforce any such Order;

(s) one or more ERISA Events shall have occurred that, in the opinion of the Required Lenders, when taken together with all other such ERISA Events that have occurred, could reasonably be expected to result in liability of any Company and its ERISA Affiliates in an aggregate amount exceeding $2,500,000 or the imposition of a Lien on any properties of a Company;

(t) any security interest and Lien in any material portion of the Collateral purported to be created by any Security Document shall cease to be in full force and effect, or shall cease to give the Collateral Agent, for the benefit of the Secured Parties, the Liens, rights, powers and privileges purported to be created and granted under such Security Documents (including a valid, enforceable, perfected first priority (except as otherwise provided in this Agreement or any Security Document) security interest in and Lien on, all of the Collateral thereunder (except as otherwise expressly provided in this Agreement or such Security Document)) in favor of the Collateral Agent, or shall be asserted by or on behalf of any Company not to be, a valid, enforceable, perfected, first priority (except as otherwise expressly provided in this Agreement or such Security Document) security interest in or Lien on the Collateral covered thereby; *provided* that it will not be an Event of Default under this paragraph (k) if the Collateral Agent shall not have or shall cease to have a valid, enforceable and perfected first priority Lien on any Collateral purported to be covered by the Security Documents, individually or in the aggregate, having a Fair Market Value of less than $2,500,000;

(u) any Loan Document or any material provisions thereof shall at any time and for any reason be declared by a court of competent jurisdiction to be null and void, or a proceeding shall be commenced by or on behalf of any Loan Party or any other person, or by any Governmental Authority, seeking to establish the invalidity or unenforceability thereof (exclusive of questions of interpretation of any provision thereof), or any Company (directly or indirectly) shall repudiate or deny any portion of its liability or obligation for the Obligations;

(v) there shall have occurred a Change of Control;

(w) there shall have occurred the termination of, or the receipt by any Company of notice of the termination of, or the occurrence of any event or condition which would, with the passage of time or the giving of notice or both, constitute an event of default under or permit the termination of, any one or more Material Agreements, Company Health Care Permits, Company Accreditations or Company Reimbursement Approvals of any Company, except for terminations that could not be expected to have a Material Adverse Effect; or

(x) [Intentionally Omitted];

(y) any Company or any of their directors or officers is criminally convicted under any law or Legal Requirement that could lead to a forfeiture of any Collateral or exclusion from participation in any federal or state health care program, including Medicare or Medicaid, and could reasonably be expected to result in a Material Adverse Effect

then, and in every such event (other than an event with respect to Borrower described in paragraph (g) or (h) above), and at any time thereafter during the continuance of such event (which shall occur for all purposes hereunder, including without limitation, with respect to Section 6.10, as of the date of occurrence or breach and not the date of reporting thereof), the Administrative Agent may, and at the request of the Required Lenders shall, by notice to Borrower, take either or both of the following actions, at the same or different times: (i) terminate forthwith the Commitments and (ii) declare the Loans and Reimbursement Obligations then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans and Reimbursement Obligations so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Loan Parties accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Loan Parties, anything contained herein or in any other Loan Document or otherwise to the contrary notwithstanding; and in any event with respect to Borrower described in paragraph (g) or (h) above, the Commitments shall automatically terminate and the principal of the Loans and Reimbursement Obligations then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Loan Parties accrued hereunder and under any other Loan Document, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Loan Parties, anything contained herein or in any other Loan Document or otherwise to the contrary notwithstanding. No remedy and no waiver, modification or amendment of an Event of Default shall be effective unless in writing and otherwise in conformance with the requirements of Section 11.02.

Section 8.02 **Rescission**. If at any time after termination of the Commitments or acceleration of the maturity of the Loans, the Loan Parties shall pay all arrears of interest and all payments on account of principal of the Loans and Reimbursement Obligations owing by them that shall have become due otherwise than by acceleration (with interest on principal and, to the extent permitted by law, on overdue interest, at the rates specified herein) and all Defaults (other than non-payment of principal of and accrued interest on

the Loans due and payable solely by virtue of acceleration) shall be remedied or waived pursuant to Section 11.02, then upon the written consent of the Required Lenders (which may be given or withheld in their sole discretion) and written notice to Borrower, the termination of the Commitments or the acceleration and their consequences may be rescinded and annulled; but such action shall not affect any subsequent Default or impair any right or remedy consequent thereon. The provisions of the preceding sentence are intended merely to bind the Lenders, the Issuing Lender and the other Secured Parties to a decision that may be made at the election of the Required Lenders, and such provisions are not intended to benefit Borrower and the other Loan Parties and do not give Borrower and/or any of the Loan Parties the right to require the Lenders to rescind or annul any acceleration hereunder, even if the conditions set forth herein are met.

ARTICLE IX
COLLECTION ACCOUNT; APPLICATION OF COLLATERAL PROCEEDS

Section 9.01 **Collection Account**. (a) Each Loan Party shall deposit into the Collection Account from time to time all Collections and any cash that such Loan Party is required to pledge as additional collateral security hereunder pursuant to the Loan Documents.

(s) The balance from time to time in the Collection Account shall constitute part of the Collateral and shall not constitute payment of the Obligations until applied as hereinafter provided. So long as no Event of Default has occurred and is continuing or will result therefrom, all funds in the Collection Account shall be applied as set forth in the Collateral Management Agreement At any time following the occurrence and during the continuance of an Event of Default, the Collateral Agent may (and, if instructed by the Required Lenders as specified herein, shall) in its (or their) discretion apply or cause to be applied (subject to collection) the balance from time to time outstanding to the credit of the Collection Account to the payment of the Obligations in the manner specified in Section 9.02 subject, however, in the case of amounts deposited in the LC Sub-Account, to the provisions of Section 2.18(j). The Loan Parties shall have no right to withdraw, transfer or otherwise receive any funds deposited in the Collection Account except to the extent specifically provided herein or the Collateral Management Agreement.

(t) Amounts deposited into the Collection Account as cover for liabilities in respect of Letters of Credit under any provision of this Agreement requiring such cover shall be held by the Administrative Agent in a separate sub-account designated as the "LC Sub-Account" (the "**LC Sub-Account**") and, subject to Section 2.18(j), all amounts held in the LC Sub-Account shall constitute collateral security to be applied in accordance with Section 2.18(j). So long as no Event of Default has occurred and is continuing or will result therefrom, the Collateral Agent shall within two Business Days of receiving a request of the applicable Loan Party for release of cash proceeds with respect to the LC Sub-Account, remit such cash proceeds on deposit in the LC Sub-Account to or upon the order of such Loan Party (x) at such time as all Letters of Credit shall have been terminated and all of the liabilities in respect of the Letters of Credit have been paid in full or (y) otherwise in accordance with Section 2.18(j).

Section 9.02 **Application of Proceeds**. The proceeds received by the Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by the Collateral Agent of its remedies shall be applied, in full or in part, together with any other sums then held or received by the Collateral Agent pursuant to this Agreement, the Collateral Management Agreement or any other Loan Document, promptly by the Collateral Agent as follows:

(j) *First*, to the payment of all reasonable costs and expenses, fees, commissions and taxes of such sale, collection or other realization including compensation to the Collateral Agent and its agents and counsel, and all expenses, liabilities and advances made or incurred by the Collateral Agent in

connection therewith and all amounts for which the Collateral Agent is entitled to indemnification pursuant to the provisions of any Loan Document, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(k) *Second*, to the payment of all other reasonable costs and expenses of such sale, collection or other realization including compensation to the other Secured Parties and their agents and counsel and all costs, liabilities and advances made or incurred by the other Secured Parties in connection therewith, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(l) *Third*, without duplication of amounts applied pursuant to clauses (a) and (b) above, to the indefeasible payment in full in cash, pro rata, of interest and other amounts constituting Obligations (other than principal, Reimbursement Obligations and Hedging Obligations) in each case equally and ratably in accordance with the respective amounts thereof then due and owing;

(m) *Fourth*, to the indefeasible payment in full in cash, *pro rata*, of the principal amount of the Obligations then due and payable (including any Borrowing Base Deficiency and Reimbursement Obligations) and (ii) to Issuing Lender (and for the ratable benefit of each of the Lenders that have an obligation to pay to Agent, for the account of the Issuing Lender, a share of each LC Disbursement), as cash collateral in an amount up to 105% of the LC Exposure (to the extent permitted by applicable law, such cash collateral shall be applied to the reimbursement of any LC Disbursement as and when such disbursement occurs and, if a Letter of Credit expires undrawn, the cash collateral held by Agent in respect of such Letter of Credit shall, to the extent permitted by applicable law, be reapplied beginning with the *First* tier hereof);

(n) *Fifth*, to Hedging Obligations to the extent secured by Liens on the Collateral and constituting Obligations of the type described in clause (c) of the definition of Obligations; and

(o) *Sixth*, the balance, if any, to the person lawfully entitled thereto (including the applicable Loan Party or its successors or assigns) or as a court of competent jurisdiction may direct.

In the event that any such proceeds are insufficient to pay in full the items described in clauses (a) through (f) of this Section 9.02, the Loan Parties shall remain liable, jointly and severally, for any deficiency.

ARTICLE X
THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT

Section 10.01 **Appointment**. (a) Each Lender and the Issuing Lender hereby irrevocably designates and appoints Healthcare Finance Group, LLC as the Administrative Agent and the Collateral Agent as an agent of such Lender under this Agreement and the other Loan Documents. Each Lender irrevocably authorizes each Agent, in such capacity, through its agents or employees, to take such actions on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are delegated to such Agent by the terms of this Agreement and the other Loan Documents, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article X are solely for the benefit of the Agents, the Lenders and the Issuing Lender, and no Loan Party shall have rights as a third party beneficiary of any such provisions.

(p) Each Lender irrevocably appoints each other Lender as its agent and bailee for the purpose of perfecting Liens (whether pursuant to Section 8-301(a)(2) of the UCC or otherwise), for the benefit of the Secured Parties, in assets which, in accordance with the UCC or any other applicable Legal

Requirement, a security interest can be perfected by possession or control. Should any Lender (other than the Collateral Agent) obtain possession or control of any such Collateral, such Lender shall notify the Collateral Agent thereof, and, promptly following the Collateral Agent's request therefor, shall deliver such Collateral to the Collateral Agent or otherwise deal with such Collateral in accordance with the Collateral Agent's instructions.

Section 10.02 **Agent in Its Individual Capacity**. Each person serving as an Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent, and such person and its Affiliates may accept deposits from, lend money to, act as financial advisor or in any other advisory capacity for, and generally engage in any kind of business with, any Company or Affiliate thereof as if it were not an Agent hereunder and without duty to account therefor to the Lenders or the Issuing Lender.

Section 10.03 **Exculpatory Provisions**. No Agent, Issuing Lender or Underlying Issuer shall have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) no Agent, Issuing Lender or Underlying Issuer shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) no Agent, Issuing Lender or Underlying Issuer shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that such Agent, Issuing Lender or Underlying Issuer is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 11.02); *provided* that no Agent, Issuing Lender or Underlying Issuer shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent, Issuing Lender or Underlying Issuer to liability or that is contrary to any Loan Document or applicable Legal Requirements, and (c) except as expressly set forth in the Loan Documents, no Agent, Issuing Lender or Underlying Issuer shall have any duty to disclose or shall be liable for the failure to disclose, any information relating to any Company that is communicated to or obtained by the person serving as such Agent, Issuing Lender, Underlying Issuer or any of their Affiliates in any capacity. No Agent shall be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as any Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 11.02) or in the absence of its own gross negligence or willful misconduct as found by a final and nonappealable judgment of a court of competent jurisdiction. No Agent shall be deemed to have knowledge of any Default unless and until written notice thereof is given to such Agent by Borrower, a Lender, or the Issuing Lender, and no Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement with reference to the Administrative Agent or the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom and is intended to create or reflect only an administrative relationship between independent contracting parties. Each party to this Agreement acknowledges and agrees that the Administrative Agent may from time to time use one or more outside service providers for the tracking of all UCC financing statements (and/or other collateral related filings and registrations from time to time) required to be filed or recorded pursuant to the Loan Documents and the notification to the Administrative Agent, of, among other things, the upcoming lapse or expiration thereof, and that each of such service providers will be deemed to

be acting at the request and on behalf of Borrower and the other Loan Parties. No Agent shall be liable for any action taken or not taken by any such service provider.

Section 10.04 **Reliance by Agent**. Each Agent, Issuing Lender or Underlying Issuer shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent, or otherwise authenticated by a proper person. Each Agent, Issuing Lender or Underlying Issuer also may rely upon any statement made to it orally and believed by it to be made by a proper person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Lender, each Agent may presume that such condition is satisfactory to such Lender or the Issuing Lender unless each Agent shall have received written notice to the contrary from such Lender or the Issuing Lender prior to the making of such Loan or the issuance of such Letter of Credit. Each Agent, Issuing Lender or Underlying Issuer may consult with legal counsel (who may be counsel for Borrower), independent accountants and other advisors selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or advisors.

Section 10.05 **Delegation of Duties**. Each Agent or Issuing Lender may perform any and all of its duties and exercise its rights and powers by or through, or delegate any and all such rights and powers to, any one or more sub-agents appointed by such Agent or Issuing Lender. Each Agent or Issuing Lender and any of their respective sub-agents may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Affiliates of each Agent or Issuing Lender and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent or Issuing Lender.

Section 10.06 **Successor Agent**. Each Agent may resign as such at any time upon at least 30 days' prior notice to the Lenders, the Issuing Lender and Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with Borrower, to appoint a successor Agent from among the Lenders. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the Lenders and the Issuing Lender, appoint a successor Agent, which successor shall be a commercial banking institution organized under the laws of the United States (or any State thereof) or a United States branch or agency of a commercial banking institution, in each case, having combined capital and surplus of at least $500,000,000; *provided* that if such retiring Agent is unable to find a commercial banking institution that is willing to accept such appointment and which meets the qualifications set forth above, the retiring Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of the Agent under the Loan Documents until such time, if any, as the Required Lenders appoint a successor Agent.

Upon the acceptance of its appointment as an Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring (or retired) Agent shall be discharged from its duties and obligations under the Loan Documents. The fees payable by Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After an Agent's resignation hereunder, the provisions of this Article X, Section 11.03 and Sections 11.08 to 11.10 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Affiliates in respect of any actions taken or omitted to be taken by any of them while it was acting as Agent.

Section 10.07 **Non-Reliance on Agent and Other Lenders**. Each Lender and the Issuing Lender acknowledges that it has, independently and without reliance upon any Agent or any other Lender or any of their respective Affiliates and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender further represents and warrants that it has reviewed the Confidential Information Memorandum and each other document made available to it on the Platform in connection with this Agreement and has acknowledged and accepted the terms and conditions applicable to the recipients thereof (including any such terms and conditions set forth, or otherwise maintained, on the Platform with respect thereto). Each Lender and the Issuing Lender also acknowledges that it will, independently and without reliance upon any Agent or any other Lender or any of their respective Affiliates and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or related agreement or any document furnished hereunder or thereunder.

Section 10.08 **Name Agents**. Borrower hereby consents and acknowledges that the Administrative Agent may designate one or more Lenders from time to time as a "Documentation Agent" hereunder. Any Documentation Agent shall hold its title in name only, and that its title confers no additional rights or obligations relative to those conferred on any Lender or the Issuing Lender hereunder.

Section 10.09 **Indemnification**. The Lenders severally agree to indemnify each Agent, Issuing Lender or Underlying Issuer in each of their capacity as such and each of their Related Persons (to the extent not reimbursed by Borrower or the Subsidiary Guarantors and without limiting the obligation of Borrower or the Subsidiary Guarantors to do so), ratably according to their respective outstanding Loans, LC Commitments and Commitments in effect on the date on which indemnification is sought under this Section 10.09 (or, if indemnification is sought after the date upon which all Commitments and LC Commitments shall have terminated and the Loans and Reimbursement Obligations shall have been paid in full, ratably in accordance with such outstanding Loans, LC Commitments and Commitments as in effect immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, fines, penalties, actions, claims, suits, litigations, investigations, inquiries or proceedings, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans and Reimbursement Obligations) be imposed on, incurred by or asserted against such Agent, Issuing Lender, Underlying Issuer or Related Person in any way relating to or arising out of, the Commitments, the LC Commitment, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein, the Transactions, the Restatement Transactions or any of the other transactions contemplated hereby or thereby or any action taken or omitted by such Agent, Issuing Lender, Underlying Issuer or Related Person under or in connection with any of the foregoing (**IN ALL CASES, WHETHER OR NOT CAUSED OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF ANY AGENT, ISSUING LENDER, UNDERLYING ISSUER OR RELATED PERSON)**; *provided* that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, fines, penalties, actions, claims, suits, litigations, inquiries or proceedings, costs, expenses or disbursements that are found by a final and nonappealable judgment of a court of competent jurisdiction to have directly resulted solely from such Agent's, Issuing Lender's, Underlying Issuer's or Related Person's, as the case may be, gross negligence or willful misconduct. The agreements in this Section 10.09 shall survive the payment of the Loans, Reimbursement Obligations and all other amounts payable hereunder.

ARTICLE XI
MISCELLANEOUS

Section 11.01 **Notices**.

(n) Notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile transmission, as follows:

if to any Loan Party, to Borrower at:

BioScrip, Inc.
100 Clearbrook Road
Elmsford, New York 10523
Attention: Chief Executive Officer
Facsimile No.: (914) 460-1660

and to:

King & Spalding LLP
1185 Avenue of the Americas
New York, New York 10036
Attention: E. William Bates II. Esq.
Facsimile No.: (212) 556-2222

if to the Swingline Lender, Administrative Agent, the Collateral Agent, Collateral Manager, at:

Healthcare Finance Group, LLC
199 Water Street, 31st Floor
New York, New York 10038
Attention: Chief Credit Officer and
National Portfolio Manager
Facsimile: (212) 785-8501

and to:

Kaye Scholer LLP
425 Park Avenue
New York, New York 10022
Attention: Terry D. Novetsky, Esq.
Facsimile No.: (212) 836-6490

if to a Lender, to it at its address (or telecopy number) set forth on Annex II or in the Assignment and Acceptance pursuant to which such Lender shall have become a party hereto; and

All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by telecopy or by certified or registered mail, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 11.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 11.01, and failure to deliver courtesy copies of notices

and other communications shall in no event affect the validity or effectiveness of such notices and other communications.

Notices delivered through electronic communications to the extent provided in Section 11.01(b) below, shall be effective as provided in Section 11.01(b).

(o) Electronic Communications. Notices and other communications to the Lenders and the Issuing Lender hereunder may (subject to Section 11.01(d)) be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender or the Issuing Lender pursuant to Article II if such Lender or the Issuing Lender, as applicable, has notified the Administrative Agent (in a manner set forth in Section 11.01(a)) that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, the Collateral Agent or Borrower may, in their respective sole discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures, respectively, approved by it (including as set forth in Section 11.01(d)); provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (including by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(p) Change of Address, etc. Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

(q) Posting. Each Loan Party hereby agrees that it will provide to the Administrative Agent all information, documents and other materials that it is obligated to furnish to the Administrative Agent pursuant to this Agreement and any other Loan Document, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) relates to a request for a new, or a conversion of an existing, Borrowing or other extension of credit (including any election of an interest rate or interest period relating thereto), (ii) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (iii) provides notice of any Default under this Agreement or (iv) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any borrowing or other extension of credit hereunder (all such non-excluded communications, collectively, the "**Communications**"), by transmitting the Communications in an electronic/soft medium in a format reasonably acceptable to the Administrative Agent at such e-mail address(es) provided to Borrower by the Administrative Agent from time to time or in such other form, including hard copy delivery thereof, as the Administrative Agent shall require. In addition, each Loan Party agrees to continue to provide the Communications to the Administrative Agent in the manner specified in this Agreement or any other Loan Document or in such other form, including hard copy delivery thereof, as the Administrative Agent shall require. Nothing in this Section 11.01 shall prejudice the right of the Agents, any Lender, the Issuing Lender or any Loan Party to give any notice or other communication

pursuant to this Agreement or any other Loan Document in any other manner specified in this Agreement or any other Loan Document or as any such Agent shall reasonably require.

To the extent consented to by the Administrative Agent in writing from time to time, the Administrative Agent agrees that receipt of the Communications by the Administrative Agent at its e-mail address(es) set forth above shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Loan Documents; provided that Borrower shall also deliver to the Administrative Agent an executed original of each Compliance Certificate required to be delivered hereunder.

Each Loan Party further agrees that the Administrative Agent may make the Communications available to the other Agents, the Lenders or the Issuing Lender by posting the Communications on IntraLinks, SyndTrak or a substantially similar electronic transmission system (the "**Platform**"). The Platform is provided "as is" and "as available." The Agents do not warrant the accuracy or completeness of the Communications, or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by any Agent in connection with the Communications or the Platform.

Section 11.02 **Waivers; Amendment**. (a) No failure or delay by any Agent, the Issuing Lender or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of each Agent, the Issuing Lender and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document (other than any Hedging Agreement) or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 11.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether any Agent, any Lender or the Issuing Lender may have had notice or knowledge of such Default at the time.

(j) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended, supplemented or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Borrower and the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent, the Collateral Agent (in the case of any Security Document) and the Loan Party or Loan Parties that are parties thereto, in each case with the written consent of the Required Lenders; *provided* that no such agreement shall:

(i) increase the Commitment of any Lender without the written consent of such Lender;

(ii) reduce the principal amount or premium, if any, of any Loan or LC Disbursement or reduce the rate of interest thereon (other than waiver of any increase in the rate of interest pursuant to Section 2.06(c)), or reduce any Fees payable hereunder, or change the currency of payment of any Obligation, without the written consent of each Lender directly affected thereby;

(iii) postpone or extend the maturity of any Loan, or the required date of payment of any Reimbursement Obligation, or any date for the payment of any interest or fees payable hereunder, or reduce the amount of, waive or excuse any such payment (other than a waiver of any increase in the rate of interest pursuant to Section 2.06(c)), or postpone the scheduled date of expiration of any Commitment or postpone the scheduled date of expiration of any Letter of Credit beyond the Letter of Credit Expiration Date, without the written consent of each Lender directly affected thereby;

(iv) change Section 11.04(b) in a manner which further restricts assignments thereunder without the written consent of each Lender

(v) change Section 2.14(b) or (c) or Section 9.02 in a manner that would alter the order of or the *pro rata* sharing of payments or setoffs required thereby, without the written consent of each Lender;

(vi) change the percentage set forth in the definition of "Required Lenders" or any other provision of any Loan Document (including this Section 11.02) specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (or each Lender of such Class, as the case may be);

(vii) release all or substantially all of the Subsidiary Guarantors from their Guarantees (except as expressly provided in Article VII), or limit their liability in respect of such Guarantees, without the written consent of each Lender;

(viii) except as otherwise permitted in any Security Document or by Section 6.06, release all or substantially all the Collateral from the Liens of the Security Documents or alter the relative priorities of the Obligations entitled to the Liens of the Security Documents (except in connection with securing additional Obligations equally and ratably with the other Obligations), in each case without the written consent of each Lender;

(ix) change any provisions of any Loan Document in a manner that by its terms adversely affects the rights in respect of payments due to Lenders holding Loans of any Class differently than those holding Loans of any other Class, without the written consent of Lenders holding a majority in interest of the outstanding Loans and unused Commitments of each adversely affected Class;

(x) change any provisions in Section 2.14(b), (c) or 2.17 without the written consent of the Swingline Lender or change any provisions in Section 2.18 without the written consent of the Issuing Lender;

(xi) change the Collateral Management Agreement, without the consent of the Collateral Manager; or

(xii) (A) increase (i) the percentage utilized in the calculation under clause (i) of the defined term "Borrowing Base" with respect to Eligible Receivables above 85%, or (ii) the percentage utilized in the calculation under clause (ii) of the defined term "Borrowing Base" with respect to the OLV of Eligible Inventory above 50%, (B) use any valuation method other than OLV to determine the value of Eligible Inventory, or (C) either (i) include in the Borrowing Base any

assets other than Eligible Receivables and Eligible Inventory, or (ii) modify the Eligibility Criteria to qualify a category of Receivables or Inventory as eligible that previously was categorized as ineligible, in each case, without written consent of Lenders having Loans, LC Exposure and unused Revolving Commitments representing more than 75% of the sum of all Loans outstanding, LC Exposure and unused Revolving Commitments at such time;

provided, further, that (1) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Collateral Agent, the Collateral Manager, the Issuing Lender or the Swingline Lender without the prior written consent of the Administrative Agent, the Collateral Manager, the Issuing Lender or the Swingline Lender, as the case may be, (2) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of the Revolving Lenders may be effected by an agreement or agreements in writing entered into by Borrower and the requisite percentage in interest of the Revolving Lenders under this Section 11.02, and (3) any waiver, amendment or modification prior to the achievement of a successful syndication of the credit facilities provided herein (as determined by the Arranger in its sole discretion) may not be effected without the written consent of the Arranger. Notwithstanding the foregoing, any provision of this Agreement may be amended by an agreement in writing entered into by Borrower, the Required Lenders and the Administrative Agent (and, if their rights or obligations are affected thereby, the Issuing Lender and the Swingline Lender) if (x) by the terms of such agreement the Commitment of each Lender not consenting to the amendment provided for therein shall terminate upon the effectiveness of such amendment, (y) at the time such amendment becomes effective, each Lender not consenting thereto receives payment in full of the principal of, premium, if any, and interest accrued on each Loan made by it and all other amounts owing to it or accrued for its account under this Agreement, and (z) Section 2.16(b) is complied with.

Without the consent of any other person, the applicable Loan Party or Loan Parties and the Administrative Agent and/or Collateral Agent may (in its or their respective sole discretion, or shall, to the extent required by any Loan Document) enter into any amendment or waiver of any Loan Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by applicable Legal Requirements to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or assets so that the security interests therein comply with applicable Legal Requirements.

Section 11.03 **Expenses; Indemnity**. (a) The Loan Parties agree, jointly and severally, to pay, promptly upon demand:

(i) all reasonable costs and expenses incurred by the Arranger, the Administrative Agent, the Collateral Agent, the Collateral Manager, the Swingline Lender and the Issuing Lender, including the reasonable fees, charges and disbursements of Advisors for the Arranger, the Administrative Agent, the Collateral Agent, the Collateral Manager, the Swingline Lender and the Issuing Lender, in connection with the syndication of the Loans and Commitments, the preparation, negotiation, execution and delivery of the Loan Documents, the administration of the Credit Extensions and Commitments (including with respect to the establishment and maintenance of a Platform), the perfection and maintenance of the Liens securing the Collateral and any actual or proposed amendment, supplement or waiver of any of the Loan Documents (whether or not the transactions contemplated hereby or thereby shall be consummated);

(ii) all costs and expenses incurred by the Administrative Agent, the Collateral Manager and the Collateral Agent, including the fees, charges and disbursements of Advisors for

the Administrative Agent, the Collateral Manager, and the Collateral Agent, in connection with any action, claim, suit, litigation, investigation, inquiry or proceeding affecting the Collateral or any part thereof, in which action, claim, suit, litigation, investigation, inquiry or proceeding the Administrative Agent, the Collateral Manager, or the Collateral Agent is made a party or participates or in which the right to use the Collateral or any part thereof is threatened, or in which it becomes necessary in the judgment of the Administrative Agent, the Collateral Manager, or the Collateral Agent to defend or uphold the Liens granted by the Security Documents (including any action, claim, suit, litigation, investigation, inquiry or proceeding to establish or uphold the compliance of the Collateral with any Legal Requirements);

(iii) all costs and expenses incurred by the Arranger, the Administrative Agent, the Collateral Agent, the Collateral Manager, any other Agent, the Swingline Lender, the Issuing Lender or any Lender, including the fees, charges and disbursements of Advisors for any of the foregoing, incurred in connection with the enforcement or protection of its rights under the Loan Documents, including its rights under this Section 11.03(a), or in connection with the Loans made or Letters of Credit issued hereunder and the collection of the Obligations, including all such costs and expenses incurred during any workout, restructuring or negotiations in respect of the Obligations; and

(iv) all Other Taxes in respect of the Loan Documents.

(m) The Loan Parties agree, jointly and severally, to indemnify the Agents, each Lender, the Issuing Lender and the Swingline Lender, each Affiliate of any of the foregoing persons and each Related Person of each of the foregoing (each such person being called an "**Indemnitee**") against, and to hold each Indemnitee harmless from, all reasonable out-of-pocket costs and any and all losses, claims, damages, liabilities, fees, fines, penalties, actions, judgments, suits and related expenses, including reasonable Advisors fees, charges and disbursements (collectively, "**Claims**"), incurred by or asserted against any Indemnitee, directly or indirectly, arising out of, in any way connected with, or as a result of (i) the execution, delivery, performance, administration or enforcement of the Loan Documents or any agreement or instrument contemplated thereby or the performance by the parties thereto of their respective obligations thereunder, (ii) any actual or proposed use of the proceeds of the Loans or issuance of Letters of Credit, (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto, (iv) any actual or alleged presence or Release or threatened Release of Hazardous Materials, on, at, under or from any property owned, leased or operated by any Company at any time, or any Environmental Claim or threatened Environmental Claim related in any way to any Company, (v) any past, present or future non-compliance with, or violation of, Environmental Laws or Environmental Permits applicable to any Company, or any Company's business, or any property presently or formerly owned, leased, or operated by any Company or their predecessors in interest, (vi) the environmental condition of any property owned, leased, or operated by any Company at any time, or the applicability of any Legal Requirements relating to such property, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of any Company, (vii) the imposition of any environmental Lien encumbering Real Property, (viii) the consummation of the Transactions, the Restatement Transactions and the other transactions contemplated hereby or (ix) any actual or prospective claim, action, suit, litigation, inquiry, investigation, or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Loan Party or otherwise, and regardless of whether any Indemnitee is a party thereto; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted directly from the gross negligence or willful misconduct of such Indemnitee.

(n) The Loan Parties agree, jointly and severally, that, without the prior written consent of the Administrative Agent and any affected Lender, which consent(s) will not be unreasonably withheld, the Loan Parties will not enter into any settlement of a Claim in respect of the subject matter of clauses (i) through (ix) of Section 11.03(b) unless such settlement includes an explicit and unconditional release from the party bringing such Claim of all affected Indemnitees and does not include any statement as to or an admission of fault, culpability or failure to act by or on behalf of any Indemnitees.

(o) The provisions of this Section 11.03 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the Transactions, the Restatement Transactions and the other transactions contemplated hereby, the repayment of the Loans, Reimbursement Obligations and any other Obligations, the release of any Guarantor or of all or any portion of the Collateral, the expiration of the Commitments, the expiration of any Letter of Credit, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Agents, the Issuing Lender or any Lender. All amounts due under this Section 11.03 shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

(p) To the extent that the Loan Parties fail to pay any amount required to be paid by them to the Agents, the Issuing Lender or the Swingline Lender under paragraph (a) or (b) of this Section 11.03 in accordance with paragraph (g) of this Section 11.03, each Lender severally agrees to pay to the Agents, the Issuing Lender or the Swingline Lender, as the case may be, such Lender's *pro rata* share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount (such indemnity shall be effective whether or not the related losses, claims, damages, liabilities and related expenses are incurred or asserted by any party hereto or any third party); *provided* that the unreimbursed Claim was incurred by or asserted against any of the Agents, the Issuing Lender or the Swingline Lender in its capacity as such. For purposes of this paragraph, a Lender's "*pro rata* share" shall be determined based upon its share of the sum of the total Revolving Exposure, outstanding and unused Commitments at the time.

(q) To the fullest extent permitted by applicable Legal Requirements, no Loan Party shall assert, and each hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential, or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any Loan Document or any agreement or instrument contemplated thereby, the Transactions, the Restatement Transactions, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with the Loan Documents or the transactions contemplated thereby.

(r) All amounts due under this Section 11.03 shall be payable not later than 10 days after demand therefor.

Section 11.04 **Successors and Assigns**. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Lender that issues any Letter of Credit), except that the Loan Parties may not assign or otherwise transfer any of their respective rights or obligations hereunder without the prior written consent of the Administrative Agent, the Collateral Agent, the Issuing Lender, the Swingline Lender, and each Lender which consent may be withheld in their sole discretion (and any attempted assignment or transfer by any Loan Party without such consent shall be null and void). Nothing in this Agreement or any other Loan Document, express or implied, shall be construed to confer upon any person

(other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Lender that issues any Letter of Credit), Participants to the extent expressly provided in paragraph (e) of this Section 11,04 and, to the extent expressly contemplated hereby, the other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement or any other Loan Document.

(h) Any Lender shall have the right at any time to assign to one or more assignees (other than any Company or any Affiliate thereof or a natural person, or any Person (or any Affiliate of a Person) who is a direct or indirect holder of 5% or more of the Equity Interests of Borrower) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); *provided* that:

(xiii) except in the case of (A) an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, (B) any assignment made in connection with the syndication of the Commitment and Loans by the Arranger or (C) an assignment of the entire remaining amount of the assigning Lender's Revolving Commitment or Revolving Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than $2,500,000;

(xiv) each partial assignment shall be made as an assignment of a proportionate part of all of the assigning Lender's rights and obligations under this Agreement, except that this clause (ii) shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of Commitments or Loans;

(xv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of $3,500 (which fee may be waived or reduced by the Administrative Agent in its sole discretion); *provided* that such fee shall not be payable in the case of (A) an assignment by any Lender to an Approved Fund of such Lender, (B) any assignment made in connection with the primary syndication of the Commitments and Loans by the Arranger or (C) an assignment settled through the Administrative Agent;

(xvi) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire;

(xvii) in the case of an assignment of all or a portion of a Revolving Commitment or any Revolving Lender's obligations in respect of its LC Exposure or Swingline Exposure (except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund), the Issuing Lender and the Swingline Lender must give its prior written consent to such assignment (which consent shall not be unreasonably withheld, delayed or conditioned);

(xviii) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, the Administrative Agent must give its prior written consent to such assignment (which consent shall not be unreasonably withheld, delayed or conditioned); and

(xix) in the case of an assignment of all or a portion of a Revolving Commitment, a Revolving Loan or any Revolving Lender's obligations in respect of its LC Exposure or Swingline Exposure (except in the case of (A) an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, or (B) any assignment made in connection with the syndication of the Commitment and Loans

by the Arranger), Borrower must give its prior written consent to such assignment (which consent shall not be unreasonably withheld, delayed or conditioned).

Notwithstanding the foregoing, if a Default or Event of Default has occurred and is continuing (i) any consent of Borrower otherwise required under this paragraph shall not be required, and (ii) any consent of the Issuing Lender and the Swingline Lender required under this paragraph (b) may be withheld by such person in its sole discretion. Subject to acceptance and recording thereof pursuant to paragraph (d) of this Section 11.04, from and after the effective date specified in each Assignment and Acceptance the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement (*provided* that any liability of Borrower to such assignee under Section 2.12 or2.15 shall be limited to the amount, if any, that would have been payable thereunder by Borrower in the absence of such assignment, except to the extent any such amounts are attributable to a Change in Law occurring after the date of such assignment), and the assigning Lender thereunder 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 the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.12, 2.15 and 11.03).

(i) The Administrative Agent, acting for this purpose as an agent of Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive in the absence of manifest error, and Borrower, the Administrative Agent, the Issuing Lender and the Lenders may treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrower, the Issuing Lender, the Collateral Agent, the Swingline Lender and any Lender (with respect to its own interest only), at any reasonable time and from time to time upon reasonable prior notice.

(j) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section 11.04 and any written consent to such assignment required by paragraph (b) of this Section 11.04, the Administrative Agent shall reasonably promptly accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with the requirements of this Section 11.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (e) of this Section 11.04.

(k) Any Lender shall have the right at any time, without the consent of, or notice to Borrower, the Administrative Agent, the Issuing Lender, or the Swingline Lender or any other person to sell participations to any person (other than any Company or any Affiliate thereof or a natural person) (a "**Participant**") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans 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) Borrower, the Administrative Agent, the Collateral Agent, the Issuing Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. 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 the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; *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 (1) is described in clauses (i), (ii) or (iii) of the proviso to Section 11.02(b) and (2) directly affects such Participant. Subject to paragraph (f) of this Section 11.04, each Participant shall be entitled to the benefits of Sections 2.12 and 2.15 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 11.04. To the extent permitted by Legal Requirements, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; *provided* that such Participant agrees in writing to be subject to Section 2.14(c) as though it were a Lender. Each Lender shall, acting for this purpose as an agent of Borrower, maintain at one of its offices a register for the recordation of the names and addresses of its Participants, and the amount and terms of its participations; *provided* that no Lender shall be required to disclose or share the information contained in such register with Borrower or any other person, except as required by applicable Legal Requirements.

(l) A Participant shall not be entitled to receive any greater payment under Section 2.15 or 2.15 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the prior written consent of Borrower (which consent shall not be unreasonably withheld or delayed). A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.15 unless Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Borrower, to comply with Section 2.15(e) as though it were a Lender.

(m) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any central bank, and this Section 11.04 shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto. Without limiting the foregoing, in the case of any Lender that is a fund that invests in bank loans or similar extensions of credit, such Lender may, without the consent of Borrower, the Issuing Lender, the Swingline Lender, the Administrative Agent or any other person, collaterally assign or pledge all or any portion of its rights under this Agreement, including the Loans and Notes or any other instrument evidencing its rights as a Lender under this Agreement, to any holder of, trustee for, or any other representative of holders of, obligations owed or securities issued, by such fund, as security for such obligations or securities.

(n) Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle (an "**SPC**"), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and Borrower, the option to provide to Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to such Borrower pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to make any Loan and (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof; *provided further* that nothing herein shall make the SPC a "Lender" for the purposes of this Agreement, obligate Borrower or any other Loan Party or the Administrative Agent to deal with such SPC directly, obligate Borrower or any other Loan Party in any manner to any greater extent than they were obligated to the Granting Lender, or increase costs or expenses of Borrower. The Loan Parties and the Administrative Agent shall be entitled to deal solely with, and obtain good discharge from, the Granting Lender and shall not be required to investigate or otherwise seek the consent or approval of any SPC, including

for the approval of any amendment, waiver or other modification of any provision of any Loan Document. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States of America or any state thereof. In addition, notwithstanding anything to the contrary contained in this Section 11.04(h), any SPC may (i) with notice to, but without the prior written consent of, Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by Borrower and the Administrative Agent) providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC.

(o) The words "execution," "signed," "signature," and words of like import in any Assignment and Acceptance shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Legal Requirement, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 11.05 **Survival of Agreement**. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the reports, certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agents, the Issuing Lender or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as any Obligation or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Article X and Sections 2.12 to2.15,10.06, 11.03 and 11.08 to 11.10 shall survive and remain in full force and effect regardless of the consummation of the Transactions, the Restatement Transactions and the other transactions contemplated hereby, the repayment of the Loans, the payment of the Reimbursement Obligations, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

Section 11.06 **Counterparts; Integration; Effectiveness**. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the Fee Letter and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding

upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 11.07 **Severability**. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 11.08 **Right of Setoff**. If an Event of Default shall have occurred and be continuing, each Lender, the Issuing Lender and each of their respective Affiliates are hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Legal Requirements, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the Issuing Lender or any such Affiliate to or for the credit or the account of any Loan Party against any and all of the obligations of any Loan Party now or hereafter existing under this Agreement or any other Loan Documents held by such Lender or the Issuing Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations may be contingent or unmatured or are owed to a branch or office of such Lender or the Issuing Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender under this Section 11.08 are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

Section 11.09 **Governing Law; Jurisdiction; Consent to Service of Process**. (a) This Agreement shall be construed in accordance with and governed by the law of the State of New York, without regard to conflicts of law principles that would require the application of the laws of another jurisdiction.

(x) Each Loan Party hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by applicable Legal Requirements, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Legal Requirements. Nothing in this Agreement or any other Loan Document or otherwise shall affect any right that the Administrative Agent, any other Agent, the Issuing Lender or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(y) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable Legal Requirements, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in Section 11.09(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable Legal Requirements, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(z) Each party to this Agreement irrevocably consents to service of process in any action or proceeding arising out of or relating to any Loan Document, in the manner provided for notices (other than facsimile or email) in Section 11.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by applicable Legal Requirements.

Section 11.10 **Waiver of Jury Trial. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable Legal Requirements, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to any Loan Document, the Transactions, the Restatement Transactions or the other transactions contemplated thereby (whether based on contract, tort or any other theory). Each party hereto (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other parties hereto have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 11.10.**

Section 11.11 **Headings; No Adverse Interpretation of Other Agreements**. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement. This Agreement may not be used to interpret any other loan or debt agreement or instrument of any Company or of any other person. Any such loan or debt agreement or instrument may not be used to interpret this Agreement or any other Loan Document.

Section 11.12 **Confidentiality**. Each of the Administrative Agent, the Issuing Lender and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' and Approved Funds' directors, officers, employees, agents, advisors and other representatives, including accountants, legal counsel and other advisors (it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential pursuant to the terms hereof), (b) to the extent requested by any regulatory authority or any quasi-regulatory authority (such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Legal Requirements or by any subpoena or similar legal process or in connection with any pledge or assignment made pursuant to Section 11.04(g), (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies under the Loan Documents or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 11.12, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to Borrower and its obligations, (iii) any rating agency for the purpose of obtaining a credit rating applicable to any Loan or Loan Party or (iv) any actual or prospective investor in an SPC, (g) with the consent of Borrower or (h) to the extent such Information (i) is publicly available at the time of disclosure or becomes publicly available other than as a result of a breach of this Section 11.12 or (ii) becomes available to the Administrative Agent, the Issuing Lender or any Lender on a nonconfidential basis from a source other than Borrower or any Subsidiary. In addition, the Agents, the Issuing Lender and the Lenders may disclose the existence of the Loan Documents and information about the Loan Documents to market data collectors, similar service providers to the financing community, and service providers to the Agents, the Issuing Lender and the Lenders. For the purposes of this Section 11.12, "**Information**" shall mean all information received from Borrower relating to Borrower or any of its Subsidiaries or its business that is clearly identified at the time of delivery as confidential, other than any such information that is available to the Administrative Agent, the Issuing

Lender or any Lender on a nonconfidential basis prior to disclosure by Borrower. Any person required to maintain the confidentiality of Information as provided in this Section 11.12 shall be considered to have complied with its obligation to do so if such person has exercised the same degree of care to maintain the confidentiality of such Information as such person accords to its own confidential information.

Section 11.13 **Interest Rate Limitation**. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively, the "**Charges**"), shall exceed the maximum lawful rate (the "**Maximum Rate**") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable Legal Requirements, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section 11.13 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

Section 11.14 **Assignment and Acceptance**. Each Lender to become a party to this Agreement (other than the Administrative Agent and any other Lender that is a signatory hereto) shall do so by delivering to the Administrative Agent an Assignment and Acceptance duly executed by such Lender, Borrower (if Borrower consent to such assignment is required hereunder) and the Administrative Agent.

Section 11.15 **Obligations Absolute**. To the fullest extent permitted by applicable law, all obligations of the Loan Parties hereunder shall be absolute and unconditional irrespective of:

(c) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any Loan Party;

(d) any lack of validity or enforceability of any Loan Document or any other agreement or instrument relating thereto against any Loan Party;

(e) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from any Loan Document or any other agreement or instrument relating thereto;

(f) any exchange, release or non-perfection or loss of priority of any Liens on any or all of the Collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Obligations;

(g) any exercise or non-exercise, or any waiver of any right, remedy, power or privilege under or in respect hereof or any Loan Document; or

(h) any other circumstances which might otherwise constitute a defense available to, or a discharge of, the Loan Parties.

Section 11.16 **Waiver of Defenses; Absence of Fiduciary Duties**. (a) Each of the Loan Parties hereby waives any and all suretyship defenses available to it as a Guarantor arising out of the joint and several nature of its respective duties and obligations hereunder (including any defense contained in Article VII).

(g) Each of the Loan Parties agrees that in connection with all aspects of the transactions contemplated hereby or by the other Loan Documents and any communications in connection therewith, the Loan Parties and their respective Affiliates, on the one hand, and each Lender, SPC and Agent, on the other hand, will have a business relationship that does not create, by implication or otherwise, any fiduciary duty on the part of any Lender, SPC or any Agent or any of their respective Affiliates, and no such duty will be deemed to have arisen in connection with any such transactions or communications.

Section 11.17 **Patriot Act**. Each Lender hereby notifies each Loan Party that pursuant to the requirements of the Patriot Act, it may be required to obtain, verify and record information that identifies the Loan Parties, which information includes the name, address and taxpayer identification number of each Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the Patriot Act.

Section 11.18 **Judgment Currency**. The Loan Parties' obligations hereunder and under the other Loan Documents to make payments in Dollars shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any currency other than Dollars, except to the extent that such tender or recovery results in the effective receipt by the Administrative Agent or the respective Lender or Issuing Lender of the full amount of Dollars expressed to be payable to the Administrative Agent or such Lender or Issuing Lender under this Agreement or the other Loan Documents. If, for the purpose of obtaining or enforcing judgment against any Loan Party in any court or in any jurisdiction, it becomes necessary to convert into or from any currency other than Dollars (such other currency being hereinafter referred to as the "**Judgment Currency**") an amount due in Dollars, the conversion shall be made at the Dollar Equivalent determined as of the Business Day immediately preceding the day on which the judgment is given (such Business Day being hereinafter referred to as the "**Judgment Currency Conversion Date**").

(a) If there is a change in the rate of exchange prevailing between the Judgment Currency Conversion Date and the date of actual payment of the amount due, the Loan Parties shall pay, or cause to be paid, such additional amounts, if any (but in any event not a lesser amount) as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of Dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial award at the rate of exchange prevailing on the Judgment Currency Conversion Date.

(b) For purposes of determining the Dollar Equivalent or any other rate of exchange for this Section 11.18, such amounts shall include any premium and costs payable in connection with the purchase of Dollars.

Section 11.19 **Assumption of Obligations under Loan Documents**. Concurrently with the consummation of the Acquisition, each the Target and of its Subsidiaries agrees that they are bound as Subsidiary Guarantors under this Agreement and the other Loan Documents, and, in the case of the Security Documents, as Pledgors, in each case, by all of the terms, covenants and conditions set forth in this Agreement and the other Loan Documents to the same extent as if the Target and such Subsidiary Guarantors had been Subsidiary Guarantors immediately prior to the consummation of the Acquisition.

Section 11.20 **Assumption of Obligations under Commitment Letter and Fee Letter**. Each Loan Party hereby irrevocably agrees that it is jointly and severally liable with Borrower and each other Loan Party for any and all liabilities and obligations of Borrower relating to or arising out of any of its respective duties, responsibilities and obligations under the Commitment Letter and the Fee Letter.

Section 11.21 **Conversion of Term Loans on the Restatement Date**. Effective as the Restatement Date, each of the parties hereto acknowledges and agrees that (i) all Term Loans outstanding (and excluding those Term Loans paid in full immediately prior to the Restatement Date pursuant to Section 2.10 of the Existing Credit Agreement) shall hereby be converted into and be deemed for all purposes of this Agreement to constitute Revolving Loans, and (ii) the Revolving Commitments relating to such converted Revolving Loans will be reflected in the revised Annex II attached hereto.

Section 11.22 **Amendment And Restatement**.

(a) On the Restatement Date, the Existing Credit Agreement shall be amended, restated and superseded in its entirety. Borrower and each Subsidiary Guarantor hereby confirm and agree that all Obligations outstanding under the Existing Credit Agreement immediately prior to the amendment and restatement thereof as contemplated hereby (such Obligations, the "**Existing Credit Agreement Obligations**") shall, unless and until paid (including those repayments as of the date hereof), continue to remain outstanding under this Agreement and shall not constitute new Obligations incurred by Borrower on or after the Restatement Date. Borrower and each Subsidiary Guarantor hereby confirm that all Existing Credit Agreement Obligations are due and owing without offset, defense, counterclaim or recoupment of any kind or nature. The parties hereto acknowledge and agree that this Agreement and the other Restatement Documents, whether executed and delivered in connection herewith or otherwise, do not constitute a novation, payment and reborrowing, or termination of the Existing Credit Agreement Obligations.

(b) On the Amendment Date, the First A&R Credit Agreement shall be amended, restated and superseded in its entirety. Borrower and each Subsidiary Guarantor hereby confirm and agree that all Obligations outstanding under the First A&R Credit Agreement immediately prior to the amendment and restatement thereof as contemplated hereby (such Obligations, the "**Existing A&R Credit Agreement Obligations**") shall continue to remain outstanding under this Agreement and shall not constitute new Obligations incurred by Borrower on or after the Amendment Date. Borrower and each Subsidiary Guarantor hereby confirm that all Existing A&R Credit Agreement Obligations are due and owing without offset, defense, counterclaim or recoupment of any kind or nature. The parties hereto acknowledge and agree that this Agreement and the other documents, whether executed and delivered in connection herewith or otherwise, do not constitute a novation, payment and reborrowing, or termination of the Existing A&R Credit Agreement Obligations

IN WITNESS WHEREOF, the Loan Parties have caused this Second Amended and Restated Credit Agreement to be duly executed by their respective Responsible Officers and the other parties hereby by their authorized signatories as of the day and year first above written.

(Signature Pages Follow)

BIOSCRIP, INC., as Borrower

By: /s/ Barry A. Posner

Name:

Title:

EACH SUBSIDIARY GUARANTOR SET FORTH ON ANNEX A

By: /s/ Barry A. Posner

Name:

Title:

HEALTHCARE FINANCE GROUP, LLC,
as Sole Lead Arranger, Administrative Agent, Collateral Agent and Collateral Manager

By: /s/ Daniel Chapa
Name: Daniel Chapa
Title: President

HFG HEALTHCO-4 LLC, as a Lender
By: Master Healthco, LLC, its member

By: /s/ Daniel Chapa
Name: Daniel Chapa
Title: President

HFG HEALTHCO-4 LLC, as Swingline Lender
By: Master Healthco, LLC, its member

By: /s/ Daniel Chapa
Name: Daniel Chapa
Title: President

WELLS FARGO CAPITAL FINANCE, LLC, as a Lender, Documentation Agent and as Issuing Bank

By: /s/ Peter Possemato
Name: Peter Possemato
Title: Vice President

SIEMENS FINANCIAL SERVICES, INC., as a Lender

By: /s/ David Kantes
Name: David Kantes
Title: Senior Vice President and
Chief Risk Officer

By: /s/ Matthias Grossman
Name: Matthias Grossmann
Title: Sr. VP & CFO

Annex A

Subsidiary Guarantors

BioScrip Infusion Services, Inc.
Chronimed, LLC
BioScrip Pharmacy, Inc.
Bradhurst Specialty Pharmacy, Inc.
BioScrip Pharmacy (NY), Inc.
BioScrip PBM Services, LLC
Natural Living, Inc.
BioScrip Infusion Services, LLC
BioScrip Nursing Services, LLC
BioScrip Infusion Management, LLC
BioScrip Pharmacy Services, Inc.
CHS Holdings, Inc.
Critical Homecare Solutions, Inc.
Applied Health Care, LLC
Cedar Creek Home Health Care Agency, Inc.
Deaconess Enterprises, LLC
Deaconess HomeCare, LLC
East Goshen Pharmacy, Inc.
Elk Valley Health Services, Inc.
Elk Valley Home Health Care Agency, Inc.
Elk Valley Professional Affiliates, Inc.
Gericare, Inc.
Infusion Partners, LLC
Infusion Partners of Brunswick, LLC
Infusion Partners of Melbourne, LLC
Infusion Solutions, Inc.
Knoxville Home Therapies, LLC
National Health Infusion, Inc.
New England Home Therapies, Inc.
Option Health, Ltd.
Professional Home Care Services, Inc.
Regional Ambulatory Diagnostics, Inc.
Scott-Wilson, Inc.
South Mississippi Home Health, Inc.
South Mississippi Home Health, Inc. – Region I
South Mississippi Home Health, Inc. – Region II
South Mississippi Home Health, Inc. – Region III
Specialty Pharma, Inc.
Wilcox Medical, Inc.

Annex I

[Intentionally Omitted]

Annex II

Revolving Commitments

Lender	**Address for Notices**	**Amount of Revolving Commitment**
HFG Healthco-4, LLC	199 Water Street New York, NY 10036	$75,000,000
Wells Fargo Capital Finance, LLC	2450 Colorado Avenue, Suite 3000W Santa Monica, CA 90404	$50,000,000
Siemens Financial Services, Inc.	170 Wood Avenue South Iselin, NJ 08830	$25,000,000

Annex III

NET VALUE FACTORS

1. Rebate Receivables: Initially 99%

2. Receivables that are not Rebate Receivables:

PBM Services	Mail Order	New Jersey	Roslyn	Comm Pharm	Bronx	SF Mail	Burbank	BioScrip Consolidated
95%	95%	95%	90%	92%	92%	95%	95%	94%

Annex IV

ELIGIBILITY CRITERIA

PART I – ELIGIBLE RECEIVABLES

The following shall constitute the eligibility criteria for acceptance of Receivables and Inventory for inclusion in the Borrowing Base (capitalized terms not otherwise defined in the Credit Agreement and used in this Annex IV shall have the meaning provided in the Collateral Management Agreement and, if not defined therein, in the Security Agreement):

(c) The information provided by the Loan Parties with respect to each such Receivable is complete and correct and all documents, attestations and agreements relating thereto that have been delivered to the Collateral Manager are true and correct, and, other than with respect to Unbilled Receivables, the applicable Loan Party has billed the applicable Obligor and has delivered to such Obligor all requested supporting claim documents with respect to such Receivable and no amounts with respect to such Receivable have been paid as of the date and time of the inclusion of such Receivable in the Borrowing Base. All information set forth in the bill and supporting claim documents with respect to such Receivable is true, complete and correct; if additional information is requested by the Obligor, each Loan Party (or the applicable member thereof) has or will promptly provide the same, and if any error has been made with respect to such information, each Loan Party will promptly correct the same and, if necessary, rebill such Receivable.

(d) Each such Receivable (i) is payable, in an amount not less than its Expected Net Value, by the Obligor identified by the applicable Loan Party as being obligated to do so, (ii) is based on an actual and *bona fide* rendition of services to the Obligor or sale of goods to an Obligor or a plan participant of the Obligor in the ordinary course of business, (iii) is denominated and payable only in U.S. dollars in the United States, and (iv) is an account receivable or general intangible within the meaning of the UCC of the state in which the applicable Loan Party has its principal place of business, or is a right to payment under a policy of insurance or proceeds thereof, and is not evidenced by any instrument or chattel paper. There is no payor other than the Obligor identified by the Loan Parties as the payor primarily liable on such Receivable.

(e) Each such Receivable (i) is not the subject of any action, suit, proceeding or dispute (pending or threatened), setoff, counterclaim, defense, abatement, suspension, deferment, deductible, reduction or termination by the Obligor (except for statutory rights of Governmental Entities that are not pending or threatened), (ii) is not past, or within 60 days of, the statutory limit for the invoice delivery date applicable to the Obligor or is not aged more than 180 days from its Last Service Date, (iii) in the case of a Receivable that is not a Rebate Receivable, was not billed to the Obligor on a date more than 30 days after the Last Service Date, and (iv) in the case of a Rebate Receivable, was not billed to the Obligor on a date more than 60 days after the end of the fiscal quarter in which such Rebate Receivable became due and payable.

(f) Each such Receivable is not due from any Governmental Authority other than Medicare, Medicaid, TRICARE/CHAMPUS, Ryan White programs, 340B drug pricing programs, the State Children's Health Insurance Program (Title XXI of the Social Security Act) or any similar state or federally funded program.

(g) No Loan Party has any guaranty of, letter of credit providing credit support for, or collateral security for, such Receivable, other than any such guaranty, letter of credit or collateral security

as has been assigned to the Collateral Agent (for the benefit of the Secured Parties), and any such guaranty, letter of credit or collateral security is not subject to any Lien in favor of any other Person.

(h) The Obligor with respect to each such Receivable is (i) not currently the subject of any bankruptcy, insolvency or receivership proceeding, nor is it unable to make payments on its obligations when due, (ii) located in the United States of America, (iii) one of the following: (x) a person which in the ordinary course of its business or activities agrees to pay for healthcare services received by individuals, including, without limitation, commercial insurance companies and non-profit insurance companies (such as Blue Cross and Blue Shield) issuing health, personal injury, worker's compensation or other types of insurance, employers or unions which self-insure for employee or member health insurance, prepaid healthcare organizations, preferred provider organizations, health maintenance organizations, commercial hospitals, physician's groups or any other similar person or (y) an individual, (iv) not an Affiliate of Borrower and (v) not the Obligor of any Receivable that was a Defaulted Receivable in the past 12 months.

(i) The financing of such Receivables under the Loan Documents is made in good faith and without actual intent to hinder, delay or defraud present or future creditors of any of the Loan Parties.

(j) The insurance policy, contract or other instrument obligating an Obligor to make payment with respect to such Receivable (i) does not contain any provision prohibiting the grant of a security interest in such payment obligation from the applicable Loan Party to the Collateral Agent (for the benefit of the Secured Parties) as provided in the Security Documents, (ii) has been duly authorized and, together with such Receivable, constitutes the legal, valid and binding obligation of the Obligor in accordance with its terms, (iii) together with such Receivable, does not contravene in any material respect any requirement of law applicable thereto, and (iv) was in full force and effect and applicable to the Obligor at the time the goods or services constituting the basis for such Receivable were sold or performed.

(k) No consents by any third party to the assignment of such Receivable are required other than consents previously obtained in writing by the relevant Loan Party, a copy of each such consent having been provided to the Collateral Manager.

(l) The inclusion of each such Receivable in the Borrowing Base would not increase the fraction expressed as a percentage where (i) the numerator is the sum of the then outstanding principal amount of Eligible Receivables for any Obligor (or group of Obligors) listed below included in the Borrowing Base, and (ii) the denominator is the Borrowing Base for all Eligible Receivables, above the corresponding maximum percentage listed below:

Obligor	Maximum Percentage
Health Maintenance Organizations	100%
Managed Care Organizations	100%
Long-Term Care Facilities	20%
Employer Plans	50%
any single AAA rated Obligor	10%
any single AA rated Obligor	6%
any single A rated Obligor	4%
any single BBB rated Obligor	3%
any single unrated Obligor	3%

With respect to any Receivables that fail to satisfy the Eligibility Criteria set forth in this clause (j), such Receivables shall be deemed Eligible Receivables (provided they otherwise satisfy the Eligibility Criteria set forth in this Annex IV) until shall time that the Collateral Manager, in its sole discretion, determines that such Receivables (or any portion thereof) shall not be Eligible Receivables as a result of their failure to satisfy the Eligibility Criteria set forth in this clause (j).

(m) Unless specifically verified and accepted by the Collateral Manager, no single Eligible Receivable that is not a Rebate Receivable has an Expected Net Value greater than $800,000.

(n) No prior sale or assignment of security interest which is still in effect on the applicable date of the Borrowing Base Certificate has been made with respect to or granted in any such Receivable.

PART II – ELIGIBLE INVENTORY

The following shall constitute the Eligibility Criteria for acceptance of Inventory for inclusion in the Borrowing Base.

All Inventory of the Loan Parties, valued at the lower cost or market in accordance with GAAP, but excluding any Inventory having any of the following characteristics:

(a) Inventory that is in-transit; located at any warehouse, job site or located on any other premises that may be subject to the Lien of any person other than the Collateral Agent;

(b) Inventory that is otherwise not subject to a duly perfected first priority Lien in the Collateral Agent’s favor;

(c) Inventory that is subject to (x) a Lien in favor of any Person other than the Lender other than the ABDC Lien that is subject to the ABDC Intercreditor Agreement and (y) the Lien of a supplier or similar creditor of any of the Loan Parties that is subject to a Supplier Intercreditor Agreement;

(d) Inventory covered by any negotiable or non-negotiable warehouse receipt, bill of lading or other document of title; on consignment from any Person; on consignment to any Person or subject to any bailment unless such consignee or bailee has executed an agreement with the Lender;

(e) Supplies, packaging, parts or sample Inventory, or customer supplied parts or Inventory;

(f) Work-in-process Inventory;

(g) Inventory that is damaged, defective, obsolete, slow moving or not currently saleable in the normal course of Borrower's operations, or the amount of such Inventory that has been reduced by shrinkage;

(h) Inventory that the Borrower has returned, has attempted to return, is in the process of returning or intends to return to the vendor thereof;

(i) Inventory that is perishable or live or 30 days from expiration;

(j) Inventory stored at locations outside the United States;

(k) Inventory formulated by a Loan Party pursuant to a license unless the applicable licensor has agreed in writing to permit the Collateral Agent to exercise its rights and remedies against such Inventory; and

(l) Inventory that is classified as controlled substances, C2 or other controlled substances or pharmaceuticals unless the applicable Loan Party (i) possesses a specialized license from the U.S. Drug Enforcement Agency or other federal, state or local authority to sell or dispose of same, or (ii) is not otherwise prohibited under applicable law from selling or otherwise disposing of same.

* * *

Annex V

Borrowing Base Reserves (Eligible Receivables and Eligible Inventory)

None.

SECOND AMENDMENT AND CONSENT
TO
SECOND AMENDED AND RESTATED CREDIT AGREEMENT

THIS SECOND AMENDMENT AND CONSENT, dated as of June 29, 2012 ("**Amendment**"), to the Second Amended and Restated Credit Agreement, dated as of March 25, 2010, as amended and restated as of December 28, 2010 and as further amended and restated as of March 17, 2011 (as so amended and restated, and as further amended, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among BIOSCRIP, INC., a Delaware corporation (the "**Borrower**"), the Subsidiary Guarantors (as defined in the Credit Agreement), certain of the Lenders (as defined below) and HEALTHCARE FINANCE GROUP, LLC, as administrative agent for the Lenders and as collateral agent for the Secured Parties (in such capacities, the "**Agent**"), and as collateral manager.

The Borrower, the Subsidiary Guarantors, the financial institutions from time to time party to the Credit Agreement (the "**Lenders**"), the Agent and certain other parties are party to the Credit Agreement.

The Borrower has requested that the Lenders and the Agent (i) amend the negative covenants to permit certain Investments under the Credit Agreement and (ii) consent to certain Investments made prior to the date hereof, and the Lenders and the Agent have agreed to such amendments and consents, on the terms and subject to the conditions set forth herein.

Accordingly, in consideration of the covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Defined Terms. Unless otherwise specifically defined herein, all capitalized terms used herein shall have the respective meanings ascribed to such terms in the Credit Agreement.

2. Amendments To Credit Agreement**.** Effective as of the Effective Date (as defined below), the Credit Agreement is amended as follows:

(a) Section 6.04(a) of the Credit Agreement is amended and restated in its entirety to read as follows:

"(a) loans and advances to Effingo LLC, a Florida limited liability company, on or after the date hereof in an aggregate amount not to exceed $3,000,000;"

(b) Section 6.04(n) of the Credit Agreement is amended and restated in its entirety to read as follows:

"(n) Investments made by Borrower or any Subsidiary in any Permitted Joint Venture on or after the date hereof in an aggregate amount not to exceed $5,000,000 for each such Investment and related series of Investments (or, with respect to the Investments by Borrower in MyTeleHealth Solutions, LLC, a Delaware limited liability company (solely to the extent it is a Permitted Joint Venture), an aggregate amount not to exceed $15,000,000), and $20,000,000 in the aggregate for all such Investments; provided, that (x) if permitted under the documents related to such Permitted Joint Venture, the equity held by any Company, or (y) if not permitted, all proceeds and distributions payable to Borrower or any Subsidiary with respect to such Permitted Joint Venture, in either case, shall be

pledged to the Administrative Agent in a manner reasonably acceptable to the Administrative Agent."

3. Consent. Subject to the satisfaction of the conditions precedent set forth in Section 4 hereof and in reliance on the accuracy of the representations and warranties set forth herein, the Agent and the Required Lenders hereby consent to the making by Borrower of certain Investments prior to the date hereof to the extent such Investments are permitted under the provisions of Section 6.04 of the Credit Agreement after giving effect to amendments thereto contained in section 2 above, and agree that no Default or Event of Default shall be deemed to have occurred as a result of the making of such Investments prior to the date hereof.

4. Condition Precedent. This Amendment shall become effective upon (i) the Agent's receipt of this Amendment duly executed and delivered by the Borrower, the Subsidiary Guarantors, the Required Lenders and the Agent; and (ii) the Borrower shall have delivered to the Agent (a) the original promissory note evidencing the Investment by Borrower in Effingo LLC, accompanied by instruments of transfer or assignment undated and duly executed in blank and (b) the original promissory note evidencing the Investment (in the form of loans) by Borrower in MyTeleHealth Solutions, LLC, accompanied by instruments of transfer or assignment undated and duly executed in blank.

5. Representations and Warranties. The Borrower and each of the Loan Parties represents and warrants as of the date hereof as follows (which representations and warranties shall survive the execution and delivery of this Amendment):

(a) This Amendment and the consummation of the transactions contemplated hereby are within such Loan Party's powers and have been duly authorized by all necessary corporate or other organizational action on the part of such Loan Party. This Amendment has been duly executed and delivered by each Loan Party and constitutes a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(b) This Amendment and the consummation of the transactions contemplated hereby (i) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect or consents, approvals, registrations, filings, Permits or actions the failure of which to obtain or perform could not reasonably be expected to result in a Material Adverse Effect, (ii) will not violate the Organizational Documents of any Loan Party, (iii) will not violate or result in a default or require any consent or approval under (w) any Senior Note Documents, (x) any other indenture, agreement, or other instrument binding upon any Loan Party or its property or to which any Loan Party or its property is subject, or give rise to a right thereunder to require any payment to be made by any Loan Party, except for violations, defaults or the creation of such rights that could not reasonably be expected to result in a Material Adverse Effect or (y) any Organizational Document, (iv) will not violate any material Legal Requirement in any material respect and (v) will not result in the creation or imposition of any Lien on any property of any Loan Party.

(c) After giving effect to this Amendment, each of the representations and warranties made by any Loan Party set forth in Article III of the Credit Agreement or in any other Loan Document are true and correct in all material respects (or true and correct in all respects in the case of representations and warranties qualified by materiality or Material Adverse Effect) on and as of the date hereof with the same effect as though made on and as of such date, except to the

extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects (or true and correct in all respects in the case of representations and warranties qualified by materiality or Material Adverse Effect) on and as of such earlier date).

(d) After giving effect to this Amendment, no Default or Event of Default shall have occurred and be continuing on such date.

(e) MyTeleHealth Solutions, LLC is a Permitted Joint Venture.

6. Costs and Expenses. The Loan Parties agree, jointly and severally, to pay, promptly upon demand all reasonable costs and expenses incurred by the Agent, including the reasonable fees, charges and disbursements of Advisors for the Agent, in connection with the preparation, negotiation, execution and delivery of this Amendment.

7. Continued Effectiveness. Except for the amendments set forth in Section 2 hereof and the consent set forth in Section 3 hereof, nothing herein shall be deemed to be an amendment or waiver of any covenant or agreement contained in the Credit Agreement or any other Loan Document and each of the parties hereto agrees that all of the covenants and agreements and other provisions contained in the Credit Agreement and the other Loan Documents, as amended or otherwise consented to herein, are hereby ratified and confirmed in all respects and shall remain in full force and effect in accordance with their terms from and after the date of this Amendment. This Amendment constitutes a Loan Document under the Credit Agreement. The terms “Agreement”, “hereof”, “herein” and similar terms as used in the Credit Agreement and each reference in the other Loan Documents to “the Credit Agreement” “thereunder,” “thereof” or words of like import referring to the Credit Agreement shall mean and refer to, from and after the effectiveness of this Amendment, the Credit Agreement as amended by this Amendment, and as it may in the future be amended, restated, modified or supplemented from time to time in accordance with its terms. This Amendment shall constitute a Loan Documents under the Credit Agreement.

8. Ratification. Each Subsidiary Guarantor hereby approves and consents to this Amendment and agrees and affirms that the Guarantees of the Guaranteed Obligations continues to be in full force and effect and is hereby ratified and confirmed in all respects. Each of the Loan Parties hereby ratifies and confirms the grant of the security interest in and the Liens on its Collateral in favor of the Agent contained in the Security Documents to which it is a party.

9. Counterparts. This Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment by telecopy or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Amendment.

10. Governing Law. THIS AMENDMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

11. Captions. The captions used herein are for convenience of reference only, are not part of this Amendment and shall not affect the construction of, or be taken into consideration in interpreting, this Amendment.

12. Severability. Any provision of this Amendment held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

[Remainder of Page Intentionally Left Blank]

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

BIOSCRIP, INC., as Borrower

By: /s/ Richard Smith
Name: Richard Smith
Title: President and CEO

EACH SUBSIDIARY GUARANTOR SET FORTH ON ANNEX A

By: /s/ Richard Smith
Name: Richard Smith
Title: Authorized Officer

HEALTHCARE FINANCE GROUP, LLC,
as Sole Lead Arranger, Administrative Agent, Collateral Agent and Collateral Manager

By: /s/ John Calabro
Name: John Calabro
Title: EVP

HFG HEALTHCO-4 LLC,
as a Lender and as Swingline Lender
By: Master Healthco, LLC, its member

By: /s/ John D. Calabro
Name: John D. Calabro
Title: Executive Vice President

WELLS FARGO CAPITAL FINANCE, LLC,
as a Lender, Documentation Agent and as Issuing Bank

By: /s/ Dennis King
Name: Dennis King
Title: Vice President

SIEMENS FINANCIAL SERVICES, INC.,
as a Lender

By: /s/ Jeffrey B. Iervese
Name: Jeffrey B. Iervese
Title: Vice President

By: /s/ John Finore
Name: John Finore
Title: Vice President

GE CAPITAL FINANCIAL INC., as a Lender

By: /s/ Heather L. Glade
Name: Heather-Leigh Glade
Title: Duly Authorized Signatory

Annex A

Subsidiary Guarantors

BioScrip Infusion Services, Inc.
Chronimed, LLC
BioScrip Pharmacy, Inc.
Bradhurst Specialty Pharmacy, Inc.
BioScrip Pharmacy (NY), Inc.
BioScrip PBM Services, LLC
Natural Living, Inc.
BioScrip Infusion Services, LLC
BioScrip Nursing Services, LLC
BioScrip Infusion Management, LLC
BioScrip Pharmacy Services, Inc.
CHS Holdings, Inc.
Critical Homecare Solutions, Inc.
Applied Health Care, LLC
Cedar Creek Home Health Care Agency, Inc.
Deaconess Enterprises, LLC
Deaconess HomeCare, LLC
East Goshen Pharmacy, Inc.
Elk Valley Health Services, Inc.
Elk Valley Home Health Care Agency, Inc.
Elk Valley Professional Affiliates, Inc.
Gericare, Inc.
Infusion Partners, LLC
Infusion Partners of Brunswick, LLC
Infusion Partners of Melbourne, LLC
Infusion Solutions, Inc.
Knoxville Home Therapies, LLC
National Health Infusion, Inc.
New England Home Therapies, Inc.
Option Health, Ltd.
Professional Home Care Services, Inc.
Regional Ambulatory Diagnostics, Inc.
Scott-Wilson, Inc.
South Mississippi Home Health, Inc.
South Mississippi Home Health, Inc. – Region I
South Mississippi Home Health, Inc. – Region II
South Mississippi Home Health, Inc. – Region III
Specialty Pharma, Inc.
Wilcox Medical, Inc.

Exhibit 21.1

BIOSCRIP, INC. AND ITS SUBSIDIARIES

Entity Name	State of Incorporation	Doing Business As
BioScrip, Inc.	Delaware	
Applied Health Care, LLC	Delaware	
BioScrip Infusion Management, LLC	Delaware	
BioScrip Infusion Services, Inc.	California	BioScrip Infusion Services BioScrip Infusion Services of California
BioScrip Infusion Services, LLC	Delaware	BioScrip Infusion Services ADIMA
BioScrip Medical Supply Services, LLC	Delaware	
BioScrip Nursing Services, LLC	New York	BioScrip Nursing Services
BioScrip PBM Services, LLC	Delaware	BioScrip PBM Services
BioScrip Pharmacy (NY), Inc.	New York	BioScrip Pharmacy
BioScrip Pharmacy (Puerto Rico), Inc.	Puerto Rico	
BioScrip Pharmacy Services, Inc.	Ohio	BioScrip Pharmacy Services
BioScrip Pharmacy, Inc.	Minnesota	BioScrip Pharmacy
Bradhurst Specialty Pharmacy, Inc.	New York	Bradhurst Specialty Pharmacy The Atrium Pharmacy
Cedar Creek Home Health Care Agency, LLC	Tennessee	Deaconess HomeCare I Elk Valley Home Health Care
Chronimed, LLC	Minnesota	
CHS Holdings, Inc.	Delaware	
Critical Homecare Solutions, Inc.	Delaware	
Deaconess Enterprises, LLC	Ohio	
Deaconess HomeCare, LLC	Delaware	
East Goshen Pharmacy, Inc.	Pennsylvania	InfusionCare O.P.T.I.O.N Care of Chester County
Elk Valley Health Services, LLC	Tennessee	Deaconess HomeCare
Elk Valley Home Health Care Agency, LLC	Tennessee	Deaconess HomeCare
Elk Valley Professional Affiliates, Inc.	Tennessee	Deaconess HomeCare
Gericare, LLC	Tennessee	Deaconess HomeCare II Elk Valley Home Health Care
HomeChoice Partners, Inc.	Delaware	
Infusal Partners	Florida	
InfuCenters, LLC	Delaware	
InfuScience HHA, LLC	Delaware	
InfuScience, Inc.	Delaware	
InfuScience South Carolina, LLC	Delaware	
InfuScience Subs, Inc.	Delaware	
Infusion Partners of Brunswick, LLC	Georgia	
Infusion Partners of Melbourne, LLC	Georgia	
Infusion Partners, LLC	Ohio	Specialty Supply Partners IP Infusion LLC (In MS only)
Infusion Solutions, Inc.	New Hampshire	Infinity Infusion Care Infinity Care Systems
Infusion Therapy Specialists, Inc.	Nebraska	InfuScience First Choice Healthcare
Knoxville Home Therapies, LLC	Tennessee	Infusion Partners
National Health Infusion, Inc.	Florida	
Natural Living, Inc.	New York	BioScrip Pharmacy
New England Home Therapies, Inc.	Massachusetts	
Option Health, Ltd.	Illinois	Deaconess HomeCare BioScrip Infusion Services Option Care of the Quad Cities

Professional Home Care Services, Inc.	Delaware	
Regional Ambulatory Diagnostics, Inc.	Ohio	Deaconess HomeCare
Scott-Wilson, Inc.	Kentucky	Infusion Partners of Lexington Deaconess HomeCare Option Care Home Care Partners
South Mississippi Home Health, Inc.	Mississippi	Deaconess HomeCare Deaconess Hospice South Mississippi Home Health & Hospice Hospice Division South Mississippi Home Health
South Mississippi Home Health, Inc. – Region I	Mississippi	Deaconess HomeCare
South Mississippi Home Health, Inc. – Region II	Mississippi	Deaconess HomeCare
South Mississippi Home Health, Inc. – Region III	Mississippi	Deaconess HomeCare
Specialty Pharma, Inc.	Delaware	
Wilcox Medical, Inc.	Vermont	Wilcox Home Infusion Option Care

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-107306, 333-107307, 333-123701, 333-123704, 333-150985, 333-165749, 333-176291 and 333-187679) and Form S-3 (No. 333-187336) and in the related Prospectus of our reports dated March 14, 2013, with respect to the consolidated financial statements and schedule of BioScrip, Inc. and subsidiaries and the effectiveness of internal control over financial reporting of BioScrip, Inc. included in this Annual Report (Form 10-K/A) for the year ended December 31, 2012.

/s/ Ernst & Young LLP
Minneapolis, Minnesota
December 13, 2013

EXHIBIT 31.1

CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Richard M. Smith, certify that:

1. I have reviewed this Annual Report on Form 10-K/A of BioScrip, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f))for the registrant and have:

    a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 13, 2013

/s/ Richard M. Smith
Richard M. Smith,
President, Chief Executive Officer
and Principal Executive Officer

EXHIBIT 31.2

CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Hai Tran, certify that:

1. I have reviewed this Annual Report on Form 10-K/A of BioScrip, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f))for the registrant and have:

    a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 13, 2013

/s/ Hai Tran
Hai Tran,
Chief Financial Officer, Treasurer
and Principal Financial Officer

EXHIBIT 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of BioScrip, Inc. (the "Company") on Form 10-K/A for the year ended December 31, 2012, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Richard M. Smith, Chief Executive Officer of the Company, do hereby 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; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: December 13, 2013

/s/ Richard M. Smith
Richard M. Smith,President, Chief Executive Officer
and Principal Executive Officer

EXHIBIT 32.2

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of BioScrip, Inc. (the "Company") on Form 10-K/A for the year ended December 31, 2012, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Hai Tran, Chief Financial Officer of the Company, do hereby 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; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: December 13, 2013

/s/ Hai Tran
Hai Tran,
Chief Financial Officer, Treasurer
and Principal Financial Officer

CORRESPONDENCE

[Letterhead of Polsinelli PC]

December 13, 2013

VIA EDGAR

Mr. Jeffrey P. Riedler, Esq.
Assistant Director
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-7561

Re: BioScrip, Inc.
Form 10-K for the Fiscal Year Ended December 31, 2012
Filed March 15, 2013
File No. 000-28740

Dear Mr. Riedler:

We refer to the Annual Report on Form 10-K for the fiscal year ended December 31, 2012 (the "Annual Report") filed on March 15, 2013 by BioScrip, Inc. (the "Company") with the U.S. Securities and Exchange Commission (the "Commission"). By letter dated December 4, 2013 (the "Comment Letter"), the staff of the Commission (the "Staff") provided comments relating to the Annual Report. On behalf of the Company, and in connection with the Company's concurrent filing via EDGAR of Amendment number 1 to the Annual Report ("Amendment No. 1"), we are hereby providing the Company's responses to the Comment Letter.

The Staff's comments included in the Comment Letter, together with the Company's responses, are set forth below. The following numbered paragraphs of this letter correspond to the numbered paragraphs of the Comment Letter.

Item 1. Business
Diversified Payor Base, page 5

1. **We note your disclosure that one payor accounted for 18% of consolidated revenue during the year ended December 31, 2012. Please revise your disclosure to identify this entity as required by Item 101(c)(vii) of Regulation S-K.**

The Company has amended the Annual Report to revise the Company's disclosure to identify UnitedHealthcare as the one payor that accounted for 18% of consolidated revenue during the year ended December 31, 2012, as required by Item 101(c)(vii) of Regulation S-K. We kindly refer you to page 5 of Amendment No. 1.

Item 15. Exhibits, Financial Statement Schedules and Reports on Form 8-K, page 96

2. **Please file your Employment Letter Agreement and Severance Agreement with David Evans and your Employment Letter Agreement with Vito Ponzio, Jr. as exhibits pursuant to Item 601(10)(b)(iii)(A) of Regulation S-K. Please also revise your exhibit index to incorporate by reference your Engagement Letter with Hai Tran.**

The Company has amended the Annual Report to file the Company's Employment Letter Agreement and Severance Agreement with David Evans and the Company's Employment Letter Agreement with Vito Ponzio, Jr. as exhibits pursuant to Item 601(10)(b)(iii)(A) of Regulation S-K. In addition, the Company has amended the Annual Report to revise the exhibit index to incorporate by reference the Company's Engagement Letter with Hai Tran. We kindly refer you to page 98 of Amendment No. 1 and Exhibits 10.22, 10.23, 10.24, 10.25 and 10.26 to Amendment No. 1.

Signatures, page 102

3. **Please amend your Form 10-K to include the signature of your principal accounting officer, Patricia Bogusz, as required by General Instruction D(2) to Form 10-K.**

The Company has amended the Annual Report to include the signature of the Company's principal accounting officer, Patricia Bogusz, as required by General Instruction D(2) to Form 10-K. We kindly refer you to page 102 of Amendment No. 1.

* * * * *

The Company acknowledges that: (i) it is responsible for the adequacy and accuracy of the disclosure in the filing; (ii) Staff comments or changes to disclosure in response to Staff comments do not foreclose the Commission from taking any action with respect to the filing; and (iii) the Company may not assert Staff comments as a defense in any proceeding initiated by the Commission or any person under the federal securities laws of the United States.

We trust that the information provided in this letter addresses the Staff's comments included in the Comment Letter. If you have any questions or comments concerning the foregoing, please feel free to telephone the undersigned at (312) 463-6311 or Eric S. Wu at (816) 572-4580.

Very truly yours,

POLSINELLI PC

By: /s/ Donald E. Figliulo
Donald E. Figliulo

cc: Kimberlee C. Seah, Esq.
Senior Vice President, Secretary and General Counsel
BioScrip, Inc.