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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) December 28, 2010

BIOSCRIP, INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State of Incorporation)

0-28740
(Commission File Number)

05-0489664
(I.R.S. Employer
Identification No.)

100 Clearbrook Road, Elmsford, New York
(Address of principal executive offices)

10523
(Zip Code)

Registrant's telephone number, including area code: (914) 460-1600

N/A
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01 Entry into a Material Definitive Agreement.

Overview

On December 28, 2010, BioScrip, Inc. (referred to herein as "the Company," "we," "us" and "our") entered into an amended and restated credit agreement (the "Amended and Restated Credit Agreement"), by and among the Company, 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. The Amended and Restated Credit Agreement consists of a \$150.0 million senior secured revolving credit facility (the "Revolving Credit Facility"). The Revolving Credit Facility is scheduled to mature on March 25, 2015, but can be extended to December 28, 2015 under certain limited circumstances. The initial borrowing under the Revolving Credit Facility was used to satisfy and replace the term loans outstanding under the Company's original credit agreement. The amount of borrowings which may be made under the Revolving Credit Agreement will be based on a borrowing base to be comprised of specified percentages of eligible receivables and eligible inventory, up to a maximum of \$150.0 million and subject to certain liquidity and reserve requirements. If the amount of borrowings outstanding under the Revolving Credit Agreement exceeds the borrowing base then in effect, then the Company will be required to repay such borrowings in an amount sufficient to eliminate such excess. The Revolving Credit Facility includes \$5.0 million of availability for letters of credit and \$10.0 million of availability for swingline loans. Interest on advances under the Revolving Credit Facility will be based on a Eurodollar rate plus an applicable margin of 3.5%, with the Eurodollar rate 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 Revolving Credit Facility also carries a non-utilization fee of 0.50% per annum, payable monthly, on the unused portion of the credit line. At all times, the Company must maintain a balance under the Revolving Credit Facility of not less than \$30.0 million.

The obligations owing under the Revolving Credit Facility have been guaranteed by all of the Company's domestic 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 Revolving Credit Facility 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.

Cautionary Statements

The representations, warranties and covenants made by the parties in the agreement documenting the Revolving Credit Facility are qualified by information in disclosure schedules that the parties exchanged in connection with the execution of the agreement. Representations and warranties may be used as a tool to allocate risks between the parties, including where the parties do not have complete knowledge of all facts. Accordingly, investors should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the Company or any of the Company's affiliates.

This description of the Amended and Restated Credit Agreement is qualified in its entirety by the Amended and Restated Credit Agreement filed as Exhibit 10.1 to this Current Report on Form 8-K, which is incorporated herein by reference.

Security Agreement

In connection with the Revolving Credit Facility, on December 28, 2010, the Company entered into an amended and restated security agreement (the "Amended and Restated Security Agreement"), by and among the Company, the other guarantors from time to time party thereto, as pledgors, assignors and debtors (collectively, the "Pledgors") and Healthcare Finance Group, LLC, in its capacity as collateral agent pursuant to the Revolving Credit Facility, as pledgee, assignee and secured party. Pursuant to the Amended and Restated Security Agreement, the Pledgors each pledged a lien on and interest in and to all of the right, title and interest of such Pledgor in the Pledged Collateral (as defined in the Amended and Restated Security Agreement) as collateral security for the payment and performance in full of all the secured obligations under the Revolving Credit Facility.

This description of the Amended and Restated Security Agreement is qualified in its entirety by the Amended and Restated Security Agreement filed as Exhibit 10.2 to this Current Report on Form 8-K, which is incorporated herein by reference.

Collateral Management Agreement

In connection with the Revolving Credit Facility, on December 28, 2010, the Company entered into an amended and restated collateral management agreement (the "Amended and Restated Collateral Management Agreement"), by and among the Company, the subsidiaries of the Company party thereto as loan parties and Healthcare Finance Group, LLC, as collateral manager (the "Collateral Manager"), as administrative agent and as collateral agent. Pursuant to the Amended and Restated Collateral Management Agreement, payments to the Company and its subsidiaries in respect of receivables will be received and processed by the Collateral Manager.

This description of the Amended and Restated Collateral Management Agreement is qualified in its entirety by the Amended and Restated Collateral Management Agreement filed as Exhibit 10.3 to this Current Report on Form 8-K, which is incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligations

The disclosure provided under Item 1.01 of this Form 8-K is incorporated by reference into this Item 2.03 as if fully set forth herein.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
10.1	Amended and Restated Credit Agreement, dated as of December 28, 2010, 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.
10.2	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.
10.3	Amended and Restated Collateral Management Agreement, dated as of December 28, 2010, by and

Exhibit No.	Description
	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.
99.1	Press Release dated December 28, 2010.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

BIOSCRIP, INC.

Date: December 30, 2010

By: /s/ Barry A. Posner
Barry A. Posner
Executive Vice President, Secretary and General Counsel

**AMENDED AND RESTATED
CREDIT AGREEMENT**

dated as of March 25, 2010,

as

AMENDED AND RESTATED

as of December 28, 2010

among

BIOSCRIP, INC.,
as Borrower,

and

THE GUARANTORS PARTY HERETO,
as Guarantors,

THE LENDERS PARTY HERETO,

HFG HEALTHCO-4, LLC,
as Swingline Lender,

and

HEALTHCARE FINANCE GROUP, LLC,
as Administrative Agent, Collateral Agent and Collateral Manager

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EXHIBITS

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Exhibit B-2	Form of Borrowing Base Certificate
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AMENDED AND RESTATED CREDIT AGREEMENT

This AMENDED AND RESTATED CREDIT AGREEMENT, dated as of March 25, 2010 and as AMENDED AND RESTATED as of December 28, 2010 (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 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**"), as swingline lender (in such capacity, the "**Swingline Lender**") for the Lenders, and Healthcare Finance Group, LLC, as Issuing Bank for the Lenders (in such capacity, the "**Issuing Bank**").

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 have elected to amend and restate the Existing Credit Agreement in the manner set forth herein.

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 Existing Credit Agreement on the Restatement 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, each Document 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.

“**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 # 000009069730 at Bank of America, N.A., ABA # 011500010, 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 Bank (or for purposes of Section 2.12(b), by any lending office of such Lender or by such Lender's or Issuing Bank'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 divided 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 the Issuing Bank.

“**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 Bank, 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 Bank 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.

“Depository 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.

“Document 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 Bank 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 Credit Agreement Obligations” shall have the meaning assigned to such term in Section 11.22.

“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.

“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 Bank" shall mean, as the context may require, (a) Healthcare Finance Group, LLC (or any bank 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 that issues a Letter of Credit from time to time pursuant to Section 2.18(j) and Section 2.18(k) with respect to Letters of Credit issued by such Lender, or (c) collectively, all of the foregoing.

"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 E, 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 Bank 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 Bank.

"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 Closing 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 and each Issuing Bank.

"Letter of Credit" shall mean any Standby or Commercial Letter of Credit, in each case, issued or to be issued by an Issuing Bank 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 three 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 Bank 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 Obligators**” 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, depository 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.

"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 more than 50% 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(A) 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 Restatement 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 in the amount set forth for each Term Loan Lender on Annex II(B) to this Agreement.

“**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.

"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.

(b) 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.

(c) 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.

(d) 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 Bank, 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(b) **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).

(c) **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**").

(d) **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 Bank a fronting fee ("**Fronting Fee**"), which shall accrue at the rate per annum usually and customarily charged by the Issuing Bank to corporate account parties (or such lesser rate per annum as the Issuing Bank may from time to time agree) 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 Bank's 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, and (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 Bank 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).

(e) **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.

(f) **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 Bank. 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.

(b) 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**").

(c) 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.

(d) Accrued interest on the Swingline Loan shall be payable in arrears on the date of any repayment or prepayment of any Swingline Loan.

(e) 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. (a) The Revolving Commitments, the Swingline Commitment and the LC Commitment shall automatically terminate on the Maturity Date.

(b) 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).

(c) 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.

(b) Revolving Loan Prepayments. (i) 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(i).

(ii) 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(i), in an aggregate amount sufficient to eliminate such excess.

(iii) 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(i), in an aggregate amount sufficient to eliminate such excess.

(iv) 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(i), in an aggregate amount sufficient to eliminate such excess.

(v) 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.

(c) 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).

(d) 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 Bank; or

(ii) impose on any Lender or the Issuing Bank 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 Bank or such Lender's or the Issuing Bank'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 Bank hereunder (whether of principal, interest or otherwise), as determined by such Lender or the Issuing Bank, in good faith, in its reasonable discretion, then Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or

amounts as will compensate such Lender or the Issuing Bank, 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 Bank 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 Bank 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 Bank's capital or on the capital of such Lender's or the Issuing Bank'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 Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy), then from time to time Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank'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 Bank setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or the Issuing Bank 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 Bank, 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 Bank to demand compensation pursuant to this Section 2.12 shall not constitute a waiver of such Lender's or the Issuing Bank'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 Bank 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.

(b) 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.

(c) 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.

(d) 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 Bank 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 Bank, 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 Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules or practices on interbank compensation.

(e) 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 Bank, 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.

(b) In addition, Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Legal Requirements.

(c) Borrower shall indemnify the Administrative Agent, each Lender and the Issuing Bank, 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 Bank, 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 Bank (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 Bank, shall be conclusive absent manifest error.

(d) 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 Bank for any incremental Taxes or expenses that may become payable by the Administrative Agent, such Lender or the Issuing Bank, as the case may be, as a result of any such failure.

(e) 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).

(f) 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.

(b) Replacement of Lenders. In the event (i) any Lender or the Issuing Bank delivers a certificate requesting compensation pursuant to Section 2.12(a) or (b), (ii) any Lender or the Issuing Bank delivers a notice described in Section 2.12(e), (iii) Borrower is required to pay any additional amount to any Lender or the Issuing Bank or any Governmental Authority on account of any Lender or the Issuing Bank 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 Bank 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 Bank and the Administrative Agent, require such Lender or the Issuing Bank 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 Bank 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 Bank 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 Bank, respectively, affected by such assignment plus all Fees and other amounts owing to or accrued for the account of such Lender or such Issuing Bank hereunder (including any amounts under Section 2.12); *provided further* that, if prior to any such transfer and assignment the circumstances or event that resulted in such Lender's or the Issuing Bank'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 Bank 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 Bank pursuant to paragraph (a) of this Section 2.16), or if such Lender or the Issuing Bank 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 Bank shall not thereafter be required to make any such transfer and assignment hereunder. Each Lender and the Issuing Bank hereby irrevocably authorizes the Administrative Agent to execute and deliver, on behalf of such Lender and the Issuing Bank as assignor, any Assignment and Acceptance necessary to effectuate any assignment of such Lender's or the Issuing Bank's interests hereunder in the circumstances contemplated by this Section 2.16(b).

(c) 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 Banks or any Lender hereunder, all commitment fees that otherwise would have been payable to such Defaulting Lender (solely with respect to the portion of such Defaulting Lender's Commitment that was utilized by such 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 Banks 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 Bank 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 Banks 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.

(b) 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 Bank). 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.

(c) 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.

(d) 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.

(e) **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 an Issuing Bank 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 Bank, 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). The Issuing Bank shall have no obligation to 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 Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(b) 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 or facsimile transmission (or transmit by electronic communication if arrangements for doing so have been approved by the Issuing Bank) an LC Request to the Issuing Bank and 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 Bank).

A request for an initial issuance of a Letter of Credit shall specify in form and detail reasonably satisfactory to the Issuing Bank:

- (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 Bank 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 Bank:

- (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 Bank may require.

If requested by the Issuing Bank, Borrower also shall submit a letter of credit application on the Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and, upon issuance, amendment, renewal or extension of each Letter of Credit, Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension, (i) the LC Exposure shall not exceed the LC Commitment, (ii) the total Revolving Exposures shall not exceed the total Revolving Commitments and (iii) the conditions set forth in Article IV in respect of such issuance, amendment, renewal or extension shall have been satisfied. Unless the Issuing Bank shall agree otherwise, no Letter of Credit shall be in an initial amount less than \$100,000.

(c) 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 Bank 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 Bank elects not to extend for any such additional period.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby irrevocably grants to each Revolving Lender, and each Revolving Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Revolving Lender's Pro Rata Percentage of the aggregate amount available to be drawn under such Letter of Credit. 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 Bank, such Revolving Lender's Pro Rata Percentage of each LC Disbursement made by the Issuing Bank 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 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).

(e) Reimbursement. (i) If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, Borrower shall reimburse such LC Disbursement by paying to the Issuing Bank 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.

(ii) 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 Bank 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 Bank the amounts so received by it from the Revolving Lenders; *provided*, that if the Issuing Bank 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 Bank 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 Bank, as appropriate.

(iii) 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 Bank at (i) in the case of Borrower, the Default Rate and (ii) in the case of such Lender, 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.

(f) 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 Bank under a Letter of Credit 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 2.18, 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 Bank 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 Bank; *provided* that the foregoing shall not be construed to excuse the Issuing Bank 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 Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly give written notice to the Administrative Agent and Borrower of such demand for payment and whether the Issuing Bank has made or will make an LC Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve Borrower of its Reimbursement Obligation to the Issuing Bank and the Revolving Lenders 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)).

(h) Interim Interest. If the Issuing Bank 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 Bank, 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 Bank 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 Bank 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 all Events of Default have been cured or waived.

(j) Additional Issuing Banks. The Administrative Agent may, at any time and from time to time, designate one or more additional Revolving Lenders to act as an Issuing Bank 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 Bank pursuant to this paragraph (j) shall be deemed (in addition to being a Revolving Lender) to be the Issuing Bank 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 Bank" shall, with respect to such Letters of Credit, be deemed to refer to such Revolving Lender in its capacity as Issuing Bank, as the context shall require.

(k) Resignation or Removal of the Issuing Bank. The Issuing Bank may resign as Issuing Bank hereunder at any time upon at least 30 days' prior written notice to the Lenders, the Administrative Agent and Borrower. The Issuing Bank may be replaced at any time by written agreement among Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Bank or any such additional Issuing Bank. 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 Bank 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 Bank shall have all the rights and obligations of the Issuing Bank 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 Bank" shall be deemed to refer to such successor or such addition or to any previous Issuing Bank, or to such successor or such addition and all previous Issuing Banks, as the context shall require. After the resignation or replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit 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 Bank hereunder, Borrower may, in its discretion, select which Issuing Bank is to issue any particular Letter of Credit.

(l) Other. The Administrative Agent shall be under no obligation to arrange for an Issuing Bank 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, or Issuing Bank from issuing, such Letter of Credit, or any Legal Requirement applicable to the Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank shall prohibit, or request that the Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the Restatement Date, or shall impose upon the Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Restatement Date and which the Issuing Bank 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 or the Issuing Bank.

The Issuing Bank shall be under no obligation to amend any Letter of Credit if (A) the Issuing Bank 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 Bank 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.

(b) 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.

(c) 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.

(d) 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.

(b) 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.

(c) 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.

(d) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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).

(b) 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.

(c) 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.

(b) 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.

(b) 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.

(c) 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.

(b) 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.

(b) 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.

(c) 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.

(b) 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.

(c) 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.

(d) 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**").

(b) 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.

(c) 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.

(b) 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.

(c) 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.

(d) 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.

(e) None of the Eligible Receivables constitutes or has constituted an obligation of any Person which is an Affiliate of Borrower.

(f) 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).

(g) 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.** The obligation of each Lender and each Issuing Bank to make any Credit Extension on and after the Restatement Date shall be subject to the satisfaction of the Administrative Agent of each of the conditions precedent set forth below.

(a) **Loan Documents.** All legal matters incident to this Agreement, as amended and restated, the Credit Extensions hereunder, the Restatement Documents and the other Loan Documents shall be satisfactory to the Lenders, to the Issuing Bank and to the Administrative Agent and the Administrative Agent shall have received an executed counterpart of each of the Loan Documents and the Perfection Certificate.

(b) **Assignment of Loans.** Each Assigning Lender shall have executed and delivered the Assignment and Acceptance documentation assigning their interests in the Loans to HF-4.

(c) **Repayment of Term Loans.** (i) The Term Loans of the Term Loan Non-Assigning Lenders shall have been and (ii) the Term Loans assigned to HF-4 by the Assigning Lenders shall be concurrently with the entering into of this Agreement, paid in full and all Term Loan Commitments shall have been terminated.

(d) **Agency Succession.** All matters contemplated by the successor agency agreement dated as of the Restatement Date, among the Administrative Agent, Jefferies, the Loan Parties and the Required Lenders under the Existing Credit Agreement shall have completed (or to the

satisfaction of the Administrative Agent, will be completed as soon as reasonably practicable) and the Collateral Account (as defined in the Existing Agreement) shall have been closed and all proceeds therein delivered to the Collection Account.

(e) Corporate Documents. The Administrative Agent shall have received:

(i) a certificate of the secretary or assistant secretary of each Loan Party dated the Restatement Date, certifying (A) that attached thereto is a true and complete copy of each Organizational Document of such Loan Party certified (to the extent applicable) as of a recent date by the Secretary of State of the state of its incorporation or organization, as the case may be, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of such Loan Party authorizing the execution, delivery and performance of the Loan Documents and Restatement Documents to which such person is a party and, in the case of Borrower, the Credit Extensions hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect and (C) as to the incumbency and specimen signature of each officer executing any Loan Document, Restatement Document or any other document delivered in connection herewith on behalf of such Loan Party (together with a certificate of another officer as to the incumbency and specimen signature of the secretary or assistant secretary executing the certificate in this clause (i));

(ii) a certificate as to the good standing of each Loan Party (in so-called "long-form" if available) as of a recent date, from such Secretary of State; and

(iii) such other corporate and related documents as the Lenders, the Issuing Bank or the Administrative Agent may reasonably request.

(f) Officers' Certificate. The Administrative Agent shall have received a certificate, dated the Restatement Date and signed by a Responsible Officer of Borrower (or other senior officer acceptable to the Administrative Agent), confirming compliance with the conditions precedent set forth in this Section 4.01 and Sections 4.02(b), (c) and (d).

(g) Financings and Other Transactions, Etc. (i) Each of the Restatement Documents and other Transaction Documents (to the extent applicable on the Restatement Date) shall have been duly executed and delivered by Borrower and each Subsidiary party thereto and be in form and substance satisfactory to the Administrative Agent, and shall be in full force and effect on the Restatement Date.

(h) Financial Statements; Financial Performance; Borrowing Base.

(i) Borrower shall have delivered the Projections to the Lenders in accordance with Section 3.04(c).

(ii) Borrower shall have delivered to the Administrative Agent and the Collateral Manager a Borrowing Base Certificate which shall have been prepared (and calculated) as of the Restatement Date.

(i) Compliance with Securities Laws. Borrower shall have complied with all applicable laws and regulations (including the proxy rules under federal securities laws) in connection with obtaining all consents and approvals from the stockholders of Borrower required under applicable

securities laws and the Organizational Documents of Borrower, including all requirements with respect to the provision of a proxy statement to stockholders of Borrower.

(j) Opinions of Counsel. The Administrative Agent shall have received, on behalf of itself, the other Agents, the Arranger, the Lenders and the Issuing Bank, a favorable written opinion of (i) King & Spalding LLP, special counsel for the Loan Parties, and (ii) each local counsel listed on Schedule 4.01(j), in each case (A) dated the Restatement Date, (B) addressed to the Agents, the Issuing Bank and the Lenders and (C) covering such matters relating to the Loan Documents and the Transactions and Restatement Transactions as the Administrative Agent shall reasonably request (*provided*, that such local counsel opinions may delivered on a post-Restatement Date basis as provided for in Section 5.20 and on Schedule 5.20), and (iv) a copy of each legal opinion delivered under the other Transaction Documents, accompanied by reliance letters from the party delivering such opinion authorizing the Agents, Lenders and the Issuing Bank to rely thereon as if such opinion were addressed to them.

(k) Legal Requirements. The Administrative Agent shall be satisfied that each Company, and the Transactions and Restatement Transactions shall be in full compliance with all material Legal Requirements, including Regulations T, U and X of the Board, and shall have received satisfactory evidence of such compliance reasonably requested by it.

(l) Consents and Approvals. The Administrative Agent shall be satisfied that all necessary governmental, regulatory, shareholder and material third party approvals and consents necessary in connection with the Transactions and Restatement Transactions shall have been obtained and shall be in full force and effect, and all applicable waiting periods shall have expired without any action being taken by any applicable authority that could reasonably be expected to restrain or prevent any of the Transactions and Restatement Transactions.

(m) Litigation. There shall not exist any claim, action, suit, investigation, litigation or proceeding pending or threatened in writing before any court or any Governmental Authority, domestic or foreign, that (i) seeks to restrain or prevent the effectuation of the transactions contemplated in connection with the amendment and restatement of this Agreement, or (ii) could reasonably be expected to have a Material Adverse Effect; *provided*, that the current Minnesota U.S. Attorney's Office investigation shall not be deemed to be materially adverse for the purpose of this clause (m).

(n) Fees. The Arranger, the Collateral Manager and Administrative Agent shall have received all Fees and other amounts due and payable on or prior to the Closing Date, including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses (including the legal fees and expenses of Kaye Scholer LLP, special counsel to the Administrative Agent, and the fees and expenses of any local counsel, foreign counsel, appraisers, consultants and other advisors) required to be reimbursed or paid by the Loan Parties hereunder or under any other Loan Document.

(o) Personal Property Requirements. The Collateral Agent shall have received:

(i) the Intercompany Note executed by and among the Companies, accompanied by an endorsement to the Intercompany Note (undated and endorsed in blank) in the form attached hereto, and endorsed by each of the Loan Parties;

(ii) all other certificates, agreements, including amendments, or amendments and restatements to Depositary Agreements and control agreements, or instruments necessary to perfect the Collateral Agent's security interest in all Chattel Paper, all

Instruments, all Lockbox Accounts and Deposit Accounts identified in Schedule 16 to the Perfection Certificate and all Investment Property of each Loan Party (as each such term is defined in, and to the extent required by, the Security Agreement);

(iii) amendments to UCC financing statements indicating the name and address of the Administrative Agent, as agent for the Secured Parties, as "Secured Party" thereunder in appropriate form for filing under the UCC, amendments to filings with the United States Patent and Trademark Office and United States Copyright Office and such other documents under applicable Legal Requirements in each jurisdiction as may be necessary or appropriate or, in the reasonable opinion of the Collateral Agent, desirable to perfect the Liens created, or purported to be created, by the Security Documents;

(iv) certified copies, each as of a recent date, of (w) the UCC searches required to be attached as Schedule 5 to the Perfection Certificate, (x) United States Patent and Trademark Office and United States Copyright Office searches (*provided*, that such searches may delivered on a post-Restatement Date basis as provided for in Section 5.20 and on Schedule 5.20), (y) tax and judgment lien searches, bankruptcy and pending lawsuit searches or equivalent reports or searches listing all effective lien notices or comparable documents that name any Company as debtor and that are filed in the state and county jurisdictions in which any Company is organized or maintains its principal place of business, and (z) such other searches (if any) that the Collateral Agent reasonably deems necessary or appropriate;

(v) with respect to each Key Location existing on the Restatement Date, a Landlord Access Agreement or Bailee Letter, as applicable, copies of any notices (and if required, consents) if necessary or appropriate to be delivered in connection with the Restatement Transactions, including information regarding the name and address of the new Administrative Agent;

(vi) a copy of the notice of change of address for notices under Section 9.01 of the ABDC Intercreditor Agreement; and

(vii) evidence reasonably acceptable to the Collateral Agent of payment or arrangements for payment by the Loan Parties of all applicable filing or recording taxes, fees, charges, costs and expenses required for the filing or recording of the Security Documents.

(p) Insurance. The Administrative Agent shall have received a copy of, or a certificate as to coverage under, the insurance policies required by Section 5.04 and the applicable provisions of the Security Documents, each of which shall be addressed or otherwise amended to include a "standard" or "New York" lender's loss payable or mortgagee endorsement (as applicable) and shall name the Collateral Agent, on behalf of the Secured Parties, as additional insured, in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent.

(q) Bank Regulatory Documentation. The Administrative Agent and the Lenders shall have received at least two Business Days before the Restatement Date, in form and substance satisfactory to them, all documentation and other information required by bank regulatory authorities or reasonably requested by the Administrative Agent or any Lender under or in respect of applicable Anti-Terrorism Laws or "know-your-customer" Legal Requirements, including the Executive Order.

(r) **Performance of Obligations.** All costs, fees, expenses (including reasonable legal fees and expenses, title premiums, survey charges and recording taxes and fees) and other compensation and amounts contemplated by the Commitment Letter, the Fee Letter or otherwise payable to the Administrative Agent, its affiliates, or the Lenders or any of their respective affiliates, shall have been paid to the extent due and invoiced. The Loan Parties shall have complied with all of their covenants, agreements and obligations under the Commitment Letter and the Fee Letter, and the Commitment Letter and the Fee Letter shall be in full force and effect. Subject to Section 3 of the Commitment Letter, all of the Loan Parties' representations and warranties in the Commitment Letter and Fee Letter shall be true and correct on the Restatement Date.

(s) **Absence of Material Adverse Changes.** There shall not have been any event, development, change or circumstance since September 30, 2010, that, either individually or in the aggregate, has caused or could reasonably be expected to have a Material Adverse Effect.

(t) **Absence of Additional Information.** The Administrative Agent and the Lenders shall not have become aware after December 10, 2010 of any information, circumstance or other matter (including any matter relating to financial models and underlying assumptions relating to the Projections) affecting Borrower, Target or their respective subsidiaries, any Transaction or any other matter contemplated by the Commitment Letter or the Fee Letter (the "**New Information**") that is inconsistent with any information disclosed to the Administrative Agent and the Lenders prior to the date of the Commitment Letter (the "**Disclosed Information**"), which, if such New Information were to be regarded as a change from the Disclosed Information, could reasonably be expected to be adverse in any material respect to Borrower and its Subsidiaries, the Target and its Subsidiaries, or the rights, remedies or interests of the Lenders, taken as a whole, or have a Material Adverse Effect.

(u) **[Intentionally Omitted]**.

(v) **[Intentionally Omitted]**.

Section 4.02 **Conditions to All Credit Extensions.** The obligation of each Lender and each Issuing Bank 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.

(a) **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 Bank 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).

(b) **No Default.** No Default or Event of Default shall have occurred and be continuing on such date.

(c) **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 the case of representations and warranties qualified by materiality or Material Adverse Effect) on and as of such earlier date).

(d) **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 Bank 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.

ARTICLE V AFFIRMATIVE COVENANTS

Each Loan Party warrants, covenants and agrees with the Administrative Agent, the Collateral Agent, the Issuing Bank 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:

(a) **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;

(b) 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;

(c) 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;

(d) 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;

(e) 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);

(f) 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;

(g) **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;

(h) **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;

(i) **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)**;

(j) **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

(k) **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.

(l) **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):

(a) 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;

(b) 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;

(c) any development that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect;

(d) the occurrence of a Casualty Event in excess of \$500,000 (whether or not covered by insurance);

(e) 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;

(f) 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;

(g) (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;

(h) 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

(i) 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.

(b) 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.

(b) 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.

(c) 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.

(d) 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.

(b) 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.

(c) 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).

(b) 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.

(b) 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.

(c) 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.

(d) 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.

(b) **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.

(b) 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\(b\)](#).

(c) 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.

(d) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) Borrower agrees to cooperate in good faith and utilize reasonable commercial efforts in considering amendments or modifications of this Agreement and the Loan Documents proposed by the Administrative Agent in its good faith judgment as being necessary to achieve a successful syndication or to arrange for the execution of an Issuing Bank of this Agreement; *provided* such amendments or modifications are no less favorable in any material economic term and are proposed within 90 days of the Restatement Date.

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.

(b) 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.

(b) **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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) **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.

(i) **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.

(j) **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 Bank 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:

(a) Indebtedness incurred under this Agreement and the other Loan Documents;

(b) Indebtedness outstanding on the Restatement Date and listed on Schedule 6.01(b);

(c) 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;

(d) Indebtedness resulting from Investments, including loans or advances permitted by Section 6.04;

(e) 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;

(f) 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;

(g) Contingent Obligations of any Company in respect of Indebtedness otherwise permitted under this Section 6.01 (other than under Section 6.01(n));

(h) 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;

(i) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;

(j) (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.

(k) 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;

(l) 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);

(m) 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

(n) 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**"):

(a) 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;

(b) 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;

(c) 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**");

(d) 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;

(e) 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;

(f) 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;

(g) 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;

(h) 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;

(i) 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;

(j) 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;

(k) 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;

(l) Liens granted pursuant to the Security Documents to secure the Obligations;

(m) 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;

(n) the filing of UCC financing statements solely as a precautionary measure in connection with operating leases or consignment of goods;

(o) 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;

(p) 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

(q) 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:

(a) [Intentionally Omitted];

(b) Investments outstanding on the Restatement Date and identified on Schedule 6.04(b);

(c) 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;

(d) Hedging Obligations permitted pursuant to Section 6.01(c);

(e) 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;

(f) 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;

(g) 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;

(h) mergers, consolidations and other transactions in compliance with Section 6.05;

(i) 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;

(j) Acquisitions of property in compliance with Section 6.07;

(k) Dividends in compliance with Section 6.08;

(l) [Intentionally Omitted];

(m) 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

(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) 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:

(a) [Intentionally Omitted];

(b) dispositions of property in compliance with Section 6.06;

(c) 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;

(d) 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

(e) [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:

(a) 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;

(b) 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);

(c) 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;

(d) [Intentionally Omitted];

(e) Permitted Liens in compliance with Section 6.02;

(f) Investments in compliance with Section 6.04;

(g) dispositions related to mergers, consolidations and other transactions in compliance with Section 6.05;

(h) Dividends in compliance with Section 6.08;

(i) 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

(j) 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:

(a) Investments in compliance with Section 6.04;

(b) Capital Expenditures by Borrower and the Subsidiaries shall be permitted to the extent permitted by Section 6.10(d);

(c) purchases and other acquisitions of inventory, materials, equipment and intangible property in the ordinary course of business;

(d) leases or licenses of real or personal property in the ordinary course of business and in accordance with the applicable Security Documents;

(e) the Acquisition as contemplated by the Acquisition Documents;

(f) Permitted Acquisitions;

(g) mergers, consolidations and other transactions in compliance with Section 6.05; and

(h) 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:

- (a) Dividends by any Company that is a Subsidiary of Borrower to Borrower or any Subsidiary Guarantor;
- (b) 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;
- (c) 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
- (d) 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:

- (a) Dividends permitted by Section 6.08;
- (b) Investments, including loans and advances, permitted by Sections 6.04(e) and (f);
- (c) 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;
- (d) [Intentionally Omitted];
- (e) 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
- (f) 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.

(a) 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.

(b) 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.

(c) 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:

(a) 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;

(b) 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

(c) 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:

(a) applicable mandatory Legal Requirements;

- (b) (x) this Agreement and the other Loan Documents and (y) the Senior Note Documents;
- (c) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of a Subsidiary;
- (d) customary provisions restricting assignment of any agreement entered into by a Subsidiary in the ordinary course of business;
- (e) 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;
- (f) 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
- (g) 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.

(b) 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).

(b) 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 Bank 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 VII 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.

(b) 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.

(c) 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.

(d) 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”):

(a) 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;

(b) 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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);

(g) 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 90 days or an Order approving or ordering any of the foregoing shall be entered;

(h) 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 6.05, wind up or liquidate; or (viii) take any action for the purpose of effecting any of the foregoing;

(i) 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;

(j) 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;

(k) 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;

(l) 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;

(m) there shall have occurred a Change of Control;

(n) 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

(o) [Intentionally Omitted];

(p) 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 Bank 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.

(b) 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(i). 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.

(c) 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(i), all amounts held in the LC Sub-Account shall constitute collateral security to be applied in accordance with Section 2.18(i). 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(i).

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:

(a) *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;

(b) *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;

(c) *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;

(d) *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);

(e) *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

(f) *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 Bank 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 Bank, and no Loan Party shall have rights as a third party beneficiary of any such provisions.

(b) 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 Bank.

Section 10.03 **Exculpatory Provisions.** No Agent 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 shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) no Agent 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 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 shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent 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 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 or any of its 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 Bank, 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 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 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 Bank, each Agent may presume that such condition is satisfactory to such Lender or the Issuing Bank unless each Agent shall have received written notice to the contrary from such Lender or the Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. Each Agent 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 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. Each Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Affiliates of each Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

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 Bank 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 Bank, 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 Bank 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 Bank 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 "Document Agent" hereunder. Any Document 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 Bank hereunder.

Section 10.09 **Indemnification.** The Lenders severally agree to indemnify each Agent in its capacity as such and each of its 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 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 shall have terminated and the Loans and Reimbursement Obligations shall have been paid in full, ratably in accordance with such outstanding Loans 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 or Related Person in any way relating to or arising out of, the Commitments, 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 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 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 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 and all other amounts payable hereunder.

**ARTICLE XI
MISCELLANEOUS**

Section 11.01 **Notices.**

(a) 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(A) 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).

(b) Electronic Communications. Notices and other communications to the Lenders and the Issuing Bank 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 Bank pursuant to Article II if such Lender or the Issuing Bank, 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.

(c) 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.

(d) 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 Bank 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 Bank 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 Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of each Agent, the Issuing Bank 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 Bank may have had notice or knowledge of such Default at the time.

(b) 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 2.17 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.

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 Bank or the Swingline Lender without the prior written consent of the Administrative Agent, the Collateral Manager, the Issuing Bank 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 Bank 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 Bank, 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 Bank, 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 Bank 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.

(b) The Loan Parties agree, jointly and severally, to indemnify the Agents, each Lender, the Issuing Bank 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.

(c) 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.

(d) 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 Bank 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.

(e) To the extent that the Loan Parties fail to pay any amount required to be paid by them to the Agents, the Issuing Bank 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 Bank 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 Bank 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.

(f) 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.

(g) 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 Bank 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 Bank, 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 Bank 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.

(b) 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*:

(i) 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;

(ii) 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;

(iii) 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;

(iv) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire;

(v) 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 Bank and the Swingline Lender must give its prior written consent to such assignment (which consent shall not be unreasonably withheld, delayed or conditioned);

(vi) 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

(vii) 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 Bank 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 or 2.15 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).

(c) 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 Bank 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 Bank, 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.

(d) 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.

(e) Any Lender shall have the right at any time, without the consent of, or notice to Borrower, the Administrative Agent, the Issuing Bank, 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 Bank 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.

(f) A Participant shall not be entitled to receive any greater payment under Section 2.12 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.

(g) 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 Bank, 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.

(h) 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.

(i) 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 Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as 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 to 2.15, 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 Bank 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 Bank 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 Bank, 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 Bank 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.

(b) 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 Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(c) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent 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.

(d) 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 Bank 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 Bank or any Lender on a nonconfidential basis from a source other than Borrower or any Subsidiary. In addition, the Agents, the Issuing Bank 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 Bank 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 Bank 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:

- (a) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any Loan Party;
- (b) any lack of validity or enforceability of any Loan Document or any other agreement or instrument relating thereto against any Loan Party;
- (c) 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;
- (d) 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;
- (e) 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
- (f) 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](#)).

(b) 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.** (a) 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 Bank of the full amount of Dollars expressed to be payable to the Administrative Agent or such Lender or Issuing Bank 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**").

(b) 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.

(c) 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(A) attached hereto.

Section 11.22 Amendment And Restatement. 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.

IN WITNESS WHEREOF, the Loan Parties have caused this 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.¹

(Signature Pages Follow)

¹ To be updated as necessary

BIOSCRIP, INC., as Borrower

By: /s/ Barry A. Posner

Name: Barry A. Posner

Title: Executive Vice President,
Secretary and General Counsel

EACH SUBSIDIARY GUARANTOR SET FORTH ON ANNEX A

By: /s/ Barry A. Posner

Name: Barry A. Posner

Title: Executive Vice President,
Secretary and General Counsel

Amended and Restated Credit Agreement

HEALTHCARE FINANCE GROUP, LLC,
as Administrative Agent, Collateral Agent,
Collateral Manager, and Arranger

By: /s/ John D. Calabro
Name: John D. Calabro
Title: Executive Vice President

Amended and Restated Credit Agreement

HFG HEALTHCO-4 LLC, as a Lender

By: Master Healthco, LLC, its member

By: /s/ John D. Calabro

Name: John D. Calabro

Title: Executive Vice President

Amended and Restated Credit Agreement

HFG HEALTHCO-4 LLC, as Swingline Lender

By: Master Healthco, LLC, its member

By: /s/ John D. Calabro

Name: John D. Calabro

Title: Executive Vice President

Amended and Restated Credit Agreement

HEALTHCARE FINANCE GROUP, LLC, as Issuing Bank

By: /s/ John D. Calabro

Name: John D. Calabro

Title: Executive Vice President

Amended and Restated Credit Agreement

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.

Amended and Restated Credit Agreement

Annex I

[Intentionally Omitted]

Annex I-1

Annex II(A)

Revolving Commitments

<u>Lender</u>	<u>Address for Notices</u>	<u>Amount of Revolving Commitment</u>
HFG Healthco-4, LLC	199 Water Street New York, NY 10036	\$150,000,000

Annex II(A)-1

Annex II(B)

Term Loans

Lender	Term Loan
ING CAPITAL LLC*	\$14,812,500.00
COMPASS BANK*	\$ 9,875,000.00
GENERAL ELECTRIC CAPITAL CORPORATION*	\$ 7,900,000.00
RAYMOND JAMES BANK, FSB*	\$ 5,431,250.00
HFG HEALTHCO-4 LLC	\$19,750,000.00
JEFFERIES CP FUNDING	\$ 1,975,000.00
JFIN FUNDING LLC	\$ 1,950,000.00
AMMC VII, LIMITED	\$ 987,500.00
ATRIUM V	\$ 1,975,000.00
BATTALION CLO 2007-I	\$ 2,468,750.00
CAMULOS LOAN VEHICLE I	\$ 987,500.00
COMMONWEALTH OF PA TRSRY	\$ 987,500.00
CSAM FUNDING III	\$ 2,962,500.00
DENALI CAPITAL CLO V, LTD.	\$ 987,500.00
DENALI CAPITAL CLO VI, LTD	\$ 1,876,250.00
DENALI CAPITAL CLO VII	\$ 2,370,000.00
GSC CDO FUND VII	\$ 2,073,750.00
GSC GROUP CDO FUND VIII	\$ 2,073,750.00
GSC INVESTMENT CORP. CLO 2	\$ 2,073,750.00
GSC LOAN FUNDING 2005-1	\$ 1,580,000.00
GSC PARTNERS CDO FUND VI	\$ 2,073,750.00
GULF STREAM — COMPASS CLO	\$ 740,625.00
GULF STREAM — RASHINBAN CL	\$ 740,625.00
JFIN CLO 2007 LTD.	\$ 5,950,000.00
MADISON PARK FUNDING III	\$ 1,975,000.00
NEPTUNE FINANCE CCS, LTD	\$ 493,750.00
SPRING ROAD CLO 2007-1(FKA	\$ 1,678,750.00
TOTAL:	\$98,750,000.00

* Assigning Lender

Annex III
NET VALUE FACTORS

1. Rebate Receivables: Initially 99%
2. Receivables that are not Rebate Receivables:

PBM Services 95%	Mail Order 95%	New Jersey 95%	Roslyn 90%	Comm Pharm 92%	Bronx 92%	SF Mail 95%	Burbank 95%	BioScrip Consolidated 94%
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Annex III-1

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):

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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:

<u>Obligor</u>	<u>Maximum Percentage</u>
Health Maintenance Organizations	100%
Managed Care Organizations	100%

Obligor	Maximum Percentage
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 such 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).

(k) 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.

(l) 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 IV-4

Borrowing Base Reserves (Eligible Receivables and Eligible Inventory)

None.

[Form of]
ASSIGNMENT AND ACCEPTANCE

Reference is made to the Amended and Restated Credit Agreement, dated as of December 28, 2010 (as amended, restated, supplemented, waived or otherwise modified from time to time, the "**Credit Agreement**"), among BioScrip, Inc., a Delaware corporation ("**Borrower**"), the Subsidiary Guarantors, the Lenders, Healthcare Finance Group, LLC, as administrative agent (in such capacity, the "**Administrative Agent**"), as collateral agent for the Secured Parties and as collateral manager, and other entities party thereto. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

1. _____ (the "**Assignor**") hereby irrevocably sells and assigns, without recourse, to _____ (the "**Assignee**"), and the Assignee hereby irrevocably purchases and assumes, from the Assignor, without recourse to the Assignor, effective as of the Effective Date set forth below (but not prior to the registration of the information contained herein in the Register pursuant to Section 11.04(c) of the Credit Agreement), the interests set forth below (the "**Assigned Interest**") in the Assignor's rights and obligations under the Credit Agreement and the other Loan Documents, including, without limitation, the Swingline Commitment, Revolving Commitment and the Swingline Loans, Revolving Loans and participations held by the Assignor in Letters of Credit which are outstanding on the Effective Date. From and after the Effective Date (i) the Assignee shall be a party to and be bound by the provisions of the Credit Agreement and, to the extent of the interests assigned by this Assignment and Acceptance, have the rights and obligations of a Lender thereunder and under the Loan Documents and (ii) the Assignor shall, to the extent of the interests assigned by this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Credit Agreement.

2. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the interest being assigned hereby free and clear of any lien, encumbrance or other adverse claim created by the Assignor and that its Commitments, and the outstanding balances of its Loans, without giving effect to assignments thereof which have not become effective, are as set forth in this Assignment and Acceptance and (ii) it has all necessary power and authority, and has taken all action necessary, to execute and deliver this Assignment and Acceptance and to consummate the transactions contemplated hereby; and (b) except as set forth in (a) above, the Assignor makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Credit Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement, any other Loan Document or any other instrument or document furnished pursuant thereto, or the financial condition of any Loan Party or the performance or observance by any Loan Party of any of its obligations under the Credit Agreement, any other Loan Document or any other instrument or document furnished pursuant thereto.

3. The Assignee (a) represents and warrants that (i) it is legally authorized to enter into this Assignment and Acceptance and (ii) it has all necessary power and authority, and has taken all action necessary, to execute and deliver this Assignment and Acceptance and to consummate the transactions contemplated hereby and become a Lender under the Credit Agreement; (b) confirms that it has received a copy of the Credit Agreement, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (c) agrees that it will, independently and without reliance upon the Assignor, the Agents or any Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement, the other Loan Documents or any

other instrument or document furnished pursuant hereto or thereto; (d) appoints and authorizes the Agents to take such action as agents on its behalf and to exercise such powers and discretion under the Credit Agreement, the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto as are delegated to the Agents by the terms thereof, together with such powers as are incidental thereto; and (e) agrees that it will be bound by the provisions of the Credit Agreement and will perform in accordance with its terms all the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender.

4. The effective date of this Assignment and Acceptance shall be the Effective Date of Assignment described in Schedule 1 hereto (the "**Effective Date**"). Following the execution of this Assignment and Acceptance, it will be delivered to the Administrative Agent for acceptance by it and recording by the Administrative Agent pursuant to the Credit Agreement, effective as of the Effective Date (which shall not, unless otherwise agreed to by the Administrative Agent, in its sole discretion, be earlier than three Business Days after the date of such acceptance and recording by the Administrative Agent). This Assignment and Acceptance will be delivered to the Administrative Agent together with (a) if the Assignee is a Foreign Lender, the forms specified in Section 2.15(e) of the Credit Agreement, duly completed and executed by such Assignee; (b) if the Assignee is not already a Lender under the Credit Agreement, an Administrative Questionnaire, and (c) a processing and recordation fee of \$3,500, if required under the Credit Agreement.

5. Upon such acceptance and recording, from and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) [to the Assignor for amounts which have accrued to the Effective Date and to the Assignee for amounts which have accrued subsequent to the Effective Date] [to the Assignee whether such amounts have accrued prior to the Effective Date or accrue subsequent to the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by the Administrative Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.]

6. From and after the Effective Date, (a) the Assignee shall be a party to the Credit Agreement and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of a lender thereunder and under the other Loan Documents and shall be bound by the provisions thereof and (b) the Assignor shall, to the extent provided in this Assignment and Acceptance, relinquish its rights (except those surviving the payment in full of the Obligations) and be released from its obligations under the Loan Documents.

7. This Assignment and Acceptance 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.

SCHEDULE 1
to
Assignment and Acceptance

Effective Date of Assignment: _____

Legal Name of Assignor: _____

Legal Name of Assignee: _____

Assignee's Address for Notices: _____

Percentage Assigned of Applicable Loan/Commitment:

Loan/Commitment	Principal Amount Assigned	Percentage Assigned of applicable Loan/Commitment (set forth, to at least 15 decimals, as a percentage of the Loans and the aggregate Commitments of all Lenders thereunder)
Revolving Loans	\$	%
Letters of Credit	\$	%
Swingline Loans	\$	%

[Signature Page Follows]

The terms set forth above are hereby agreed to:

[_____]
as Assignor

By: _____
Name:
Title:

as Assignee

By: _____
Name:
Title:

Accepted:*

BIOSCRIP, INC.,
as Borrower

By: _____
Name:
Title:

HEALTHCARE FINANCE GROUP, LLC,
as Administrative Agent

By: _____
Name:
Title:

[_____],
as [Swingline Lender/Issuing Bank]**

* To be completed to the extent consent of Borrower and/or Administrative Agent is required under Section 11.04(b) of the Credit Agreement.

** To be completed to the extent consent of the Swingline Lender or Issuing Bank is required under Section 11.04(b) of the Credit Agreement.

By: _____
Name:
Title:

[Form of]
BORROWING REQUEST

Healthcare Finance Group, LLC,
as Administrative Agent for
the Lenders referred to below
199 Water Street, 31st Floor
New York, New York 10038
Attention: [Bioscrip Account Manager]
Facsimile: (212) 785-8501

Re: *BioScrip, Inc.*

[Date]

Ladies and Gentlemen:

Reference is made to the Amended and Restated Credit Agreement, dated as of December 28, 2010 (as amended, restated, supplemented, waived or otherwise modified from time to time, the "**Credit Agreement**"), among BioScrip, Inc., a Delaware corporation ("**Borrower**"), the Subsidiary Guarantors, the Lenders, Healthcare Finance Group, LLC, as administrative agent, as collateral agent for the Secured Parties and as collateral manager, and other entities party thereto. Capitalized terms used but not defined herein shall have the meaning assigned to such terms in the Credit Agreement. Borrower hereby gives you notice pursuant to Section 2.03 of the Credit Agreement that it requests a Revolving Borrowing under the Credit Agreement, and that in connection therewith sets forth below the terms on which such Revolving Borrowing is requested to be made:

B-1

(A) Principal amount of Borrowing:¹ _____

(B) Date of Borrowing
(which is a Business Day): _____

(C) Funds are requested to be disbursed
to Borrower's account with: _____

Account No. _____

Borrower hereby represents and warrants that the conditions to lending specified in Sections 4.02(b)-(d) of the Credit Agreement are satisfied as of the date hereof.

[Signature Page Follows]

¹ See Section 2.02(a) of the Credit Agreement for minimum borrowing amounts.

BIOSCRIP, INC.

By: _____

Name:

Title:

B1-3

[Form of]
BORROWING BASE CERTIFICATE

B2-1

BIOSCRIP, INC.
BORROWING BASE
at 1/31/2010

	PBM Services	Mail Order	(ADIMA2) New Jersey	Roslyn	Comm Pharm	Bronx	SF Mail	Burbank	Rebate Receivables	CHS	BioScrip Consolidated
Gross Receivables As of xx/xx/xxxx											
Additions to Gross Receivables											
Manual AR											
Rebate Receivable											
Deductions to Gross Receivables											
Ineligible AR											
Offset — Shared Rebate Portion											
Cash Basis account for PBM											
Gross Eligible Receivables											
Estimated Net Value Factor	95%	95%	95%	90%	92%	92%	95%	95%	99%	0%	94%
Estimated Net Value											
Additions to Estimated Net Value											
Deduction to Estimated Net Value											
Credit Balances											
Month-end Cash intransit											0
Adjusted Net Value of Receivable											
Advance Rate A/R	85%	85%	85%	85%	85%	85%	85%	85%	85%	0%	85%
Availability	#REF	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	
Additions to Availability											
Inventory Availability per Appendix 1											0
Interim CHS availability											
Total Availability											
Borrowing Base											\$ 0
Revolving Commitment											\$150,000,000
Borrowing Limit											\$ 0
Other Reserves											
Adjusted Borrowing Limit											
Loan Activity											\$ 0
Outstanding Loan Balance Prior Monthly											
Revolving Advances Since Prior Report											—
Less Collections											—
Deposits											—
Total Interest, Fees, Charges & Expenses											—
Deposits in Transit											—
Revolving Advance Request This Report											—
Revolving Loan Balance This Report											
Net Availability											\$ 0

BIOSCRIP, INC.

The undersigned represents and warrants that the foregoing information is true, complete and correct and that the collateral reflected herein complies with and conforms to the Eligibility Criteria set forth in Annex IV to the Amended and Restated Credit Agreement dated as of December 28, 2010 by and among Bioscrip, Inc., the subsidiaries of Bioscrip, Inc., Healthcare Finance Group, LLC, as Administrative Agent, Collateral Agent and Collateral Manager, and other entities party thereto (as amended, restated, supplemented or otherwise modified from time to time, the "Agreement"). BioScrip, Inc. promises to pay to Healthcare Finance Group, LLC, as Collateral Manager, the new loan balances reflected above, plus interest, as set forth in the Agreement.

By: _____
Name:
Title:

Date: _____

BIOSCRIP, INC.
Inventory Collateral Report
As of X/XX/XXX

I.	Inventory per perpetual report	\$ —
II.	Deductions:	
	Shrinkage, Slow Moving, WIP, etc.	\$ —
	Controlled Substances (class 2)	\$ —
	Other	\$ —
III.	Net Eligible Inventory (I minus II)	\$ —
IV.	80% of Net Eligible Inventory (OLV Rate)	\$ —
V.	50% ² Of Net Orderly Liquidation Value of Eligible Inventory	\$ —
VI.	Net Inventory Availability	\$ —

² 25% (but in no event greater than \$12,000,000) until the Valuation Delivery Date.

[Form of]
COMPLIANCE CERTIFICATE

This Compliance Certificate (this "**Certificate**") is delivered to you pursuant to Section 5.01(d) of the Amended and Restated Credit Agreement, dated as of December 28, 2010 (as amended, restated, supplemented, waived or otherwise modified from time to time, the "**Credit Agreement**"), among BioScrip, Inc., a Delaware corporation ("**Borrower**"), the Subsidiary Guarantors, the Lenders, Healthcare Finance Group, LLC, as administrative agent, as collateral agent for the Secured Parties and as collateral manager, and other entities party thereto. Capitalized terms used but not defined herein shall have the meaning assigned to such terms in the Credit Agreement.

1. I am the duly elected, qualified and acting [*specify type of Financial Officer*] of Borrower.
2. I have reviewed and am familiar with the contents of this Certificate.
3. I have reviewed the terms of the Credit Agreement and the other Loan Documents and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and condition of Borrower and its Subsidiaries during the accounting period covered by the financial statements attached hereto as Attachment 1 (the "**Financial Statements**"). Such review did not disclose the existence during or at the end of the accounting period covered by the Financial Statements, and I have no knowledge of the existence, as of the date of this Certificate, of any condition or event which constitutes a Default or an Event of Default[, except as set forth below].
4. Attached hereto as Attachment 2 are the computations showing compliance with the covenants set forth in Section 6.10 of the Credit Agreement.¹

IN WITNESS WHEREOF, I execute this Certificate in my official capacity as the [Financial Officer] of Borrower, and not individually, this ____ day of _____, 20__.

By: _____
Name:
Title: [Financial Officer] of BioScrip, Inc.

¹ This Attachment should only be included in a Compliance Certificate to be concurrently delivered with any delivery of financial statements under Section 5.01(a) or Section 5.01(b) of the Credit Agreement.

ATTACHMENT 1
TO
COMPLIANCE CERTIFICATE

Financial Statements

The information described herein is as of [_____], and pertains to the fiscal [month] [quarter] [year] ended [_____].

ATTACHMENT 2
TO
COMPLIANCE CERTIFICATE
[Set forth financial covenant calculations]

C-3

[Form of]
INTERCOMPANY NOTEINTERCOMPANY
SUBORDINATED DEMAND PROMISSORY NOTE

Note Number: _____

Dated: _____, 20__

FOR VALUE RECEIVED, Borrower (as defined below), and each of its Subsidiaries (collectively, the “**Group Members**” and each, a “**Group Member**”) which is a party to this intercompany subordinated demand promissory note (this “**Promissory Note**”) as a Payor (as defined below) promises to pay to the order of such other Group Member that makes loans to such Group Member (each Group Member which borrows money pursuant to this Promissory Note is referred to herein as a “**Payor**” and each Group Member which makes loans and advances pursuant to this Promissory Note is referred to herein as a “**Payee**”), on demand, in lawful money of the United States of America, in immediately available funds and at the appropriate office of the Payee, the aggregate unpaid principal amount of all loans and advances heretofore and hereafter made by such Payee to such Payor and any other indebtedness now or hereafter owing by such Payor to such Payee as shown in the books and records of such Payee. The failure to show any such indebtedness or any error in showing such Indebtedness shall not affect the obligations of any Payor hereunder. Unless otherwise defined herein, terms defined in the Credit Agreement (hereinafter defined) and used herein shall have the meanings given to them in that certain Amended and Restated Credit Agreement, dated as of December 28, 2010 (as amended, restated, supplemented, waived or otherwise modified from time to time, the “**Credit Agreement**”), among BioScrip, Inc., a Delaware corporation (“**Borrower**”), the Subsidiary Guarantors, the Lenders, Healthcare Finance Group, LLC, as administrative agent (in such capacity, the “**Administrative Agent**”), as collateral agent for the Secured Parties and as collateral manager, and other entities party thereto.

The unpaid principal amount hereof from time to time outstanding shall bear interest at a rate equal to the rate as may be agreed upon in writing from time to time by the relevant Payor and Payee. Each Payor and any endorser of this Promissory Note hereby waives presentment, demand, protest and notice of any kind. No failure to exercise, and no delay in exercising, any rights hereunder on the part of the holder hereof shall operate as a waiver of such rights.

This Promissory Note has been pledged by (x) each Payee that is a Loan Party to the Collateral Agent, for the benefit of the Secured Parties, as security for such Payee's Obligations, if any, under the Credit Agreement, the Security Agreement and the other Loan Documents to which such Payee is a party and (y) each Payee that is the Company or any Guarantor (as defined in the Senior Note Agreement) to the Trustee (under and as defined in the Senior Note Agreement) for the benefit of the Holders (as defined in the Senior Note Agreement). Each Payor acknowledges and agrees that (x) upon the occurrence and during the continuation of an Event of Default, the Collateral Agent and the other Secured Parties may exercise all the rights of the Payees that are Loan Parties under this Promissory Note in accordance with the terms and conditions of the Credit Agreement, the Security Agreement and the other Loan Documents and will not be subject to any abatement, reduction, recoupment, defense, setoff or counterclaim available to such Payor, and (y) upon the occurrence and during the continuation of an Event of Default (as defined in the Senior Note Agreement), the Trustee (as defined in the Senior Note Agreement) may exercise all rights of the Company or any Guarantor (as defined in the Senior Note Agreement) as Payees under this Promissory Note in accordance with the terms and conditions of the Senior Note Agreement and other

Senior Note Documents and will not be subject to any abatement, reduction, recoupment, defense, setoff or counterclaim available to such Payor.

Each Payee agrees that any and all claims of such Payee against any Payor that is a Loan Party or any endorser for the obligations of a Payor that is a Loan Party of this Promissory Note, or against any of their respective properties, shall be subordinate and subject in right of payment to (x) the Obligations until all of the Obligations have been performed and paid in full in immediately available funds, all Letters of Credit have been terminated or cash collateralized and the Commitments have been terminated; *provided*, that each such Payor may make payments to the applicable Payee so long as no Default or Event of Default shall have occurred and be continuing and (y) the Obligations (as defined in the Senior Note Agreement) until all of the Obligations (as defined in the Senior Note Agreement) have been performed and paid in full in immediately available funds; *provided*, that each such Payor may make payments to the applicable Payee so long as no Default or an Event of Default (each as defined in the Senior Note Agreement) shall have occurred and be continuing.

Notwithstanding any right of any Payee to ask, demand, sue for, take or receive any payment from any Payor, all rights, Liens and security interests of such Payee, whether now or hereafter arising and howsoever existing, in any assets of any Payor (whether constituting part of the security or collateral given to the Collateral Agent or any Secured Party to secure payment of all or any part of the Obligations or otherwise) shall be and hereby are subordinated to the rights of (x) the Administrative Agent or any Secured Party in such assets and (y) the Trustee (as defined in the Senior Note Agreement) or any Holder (as defined in the Senior Note Agreement) in such assets. Except as expressly permitted by the Credit Agreement and the Senior Note Agreement, the Payees shall have no right to possession of any such asset or to foreclose upon, or exercise any other remedy in respect of, any such asset, whether by judicial action or otherwise, unless and until all of (x) the Obligations shall have been performed and paid in full in immediately available funds, all Letters of Credit have been terminated or cash collateralized and the Commitments have been terminated and (y) the Obligations (as defined in the Senior Note Agreement) shall have been performed and paid in full in immediately available funds.

This Promissory Note shall be binding upon each Payor and its successors and assigns, and the terms and provisions of this Promissory Note shall inure to the benefit of each Payee and their respective successors and assigns, including subsequent holders hereof. Notwithstanding anything to the contrary contained herein, in any Loan Document or any Senior Note Document or in any other promissory note or other instrument, this Promissory Note (i) replaces and supersedes any and all promissory notes or other instruments which create or evidence any loans or advances made on or before the date hereof by any Payee to any other Group Member, and (ii) shall not be deemed replaced, superseded or in any way modified (x) by any promissory note or other instrument entered into on or after the date hereof which purports to create or evidence any loan or advance by any Payee to any other Group Member or (y) prior to the payment in full of the Obligations, termination or cash collateralization of all Letters of Credit and the terminations of all Commitments.

THIS PROMISSORY NOTE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS PROMISSORY NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CHOICE OF LAW THAT WOULD APPLY THE LAW OF ANOTHER JURISDICTION.

The terms and provisions of this Promissory Note are severable, and if any term or provision shall be determined to be superseded, illegal, invalid or otherwise unenforceable in whole or in part pursuant to applicable Legal Requirements by a Governmental Authority having jurisdiction, such determination shall

not in any manner impair or otherwise affect the validity, legality or enforceability of that term or provision in any other jurisdiction or any of the remaining terms and provisions of this Promissory Note in any jurisdiction.

From time to time after the date hereof, additional Subsidiaries of Borrower may become parties (as Payor and/or Payee, as the case may be) hereto by executing a counterpart signature page to this Promissory Note (each additional Subsidiary, an "**Additional Party**"). Upon delivery of such counterpart signature page to the Payees, notice of which is hereby waived by the other Payors, each Additional Party shall be a Payor and/or a Payee, as the case may be, and shall be as fully a party hereto as if such Additional Party were an original signatory hereof. Each Payor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Payor or Payee hereunder. This Promissory Note shall be fully effective as to any Payor or Payee that is or becomes a party hereto regardless of whether any other person becomes or fails to become or ceases to be a Payor or Payee hereunder.

This Promissory Note may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Promissory Note by telecopy or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Promissory Note.

[Signature Page Follows]

IN WITNESS WHEREOF, each Payor and Payee has caused this Intercompany Subordinated Demand Promissory Note to be executed and delivered by its proper and duly authorized officer as of the date set forth above.

[PAYEE/PAYOR], as a Payor and Payee

By: _____
Name: _____
Title: _____

ENDORSEMENT

FOR VALUE RECEIVED, each of the undersigned does hereby sell, assign and transfer to _____ all of its right, title and interest in and to the Intercompany Subordinated Demand Promissory Note, dated [_____] (as amended, supplemented, replaced or otherwise modified from time to time, the "**Promissory Note**"), made by Borrower and each Subsidiary thereof or any other person that becomes a party thereto, and payable to the undersigned. This endorsement is intended to be attached to the Promissory Note and, when so attached, shall constitute an endorsement thereof.

The initial undersigned shall be the Group Members (as defined in the Promissory Note) that are Loan Parties on the date of the Promissory Note. From time to time after the date thereof, additional Subsidiaries of the Group Members shall become parties to the Promissory Note (each, an "**Additional Payee**") and, if such Subsidiaries are or will become Loan Parties, a signatory to this endorsement by executing a counterpart signature page to the Promissory Note and to this endorsement. Upon delivery of such counterpart signature page to the Payors, notice of which is hereby waived by the other Payees, each Additional Payee shall be a Payee and shall be as fully a Payee under the Promissory Note and a signatory to this endorsement as if such Additional Payee were an original Payee under the Promissory Note and an original signatory hereof. Each Payee expressly agrees that its obligations arising under the Promissory Note and hereunder shall not be affected or diminished by the addition or release of any other Payee under the Promissory Note or hereunder. This endorsement shall be fully effective as to any Payee that is or becomes a signatory hereto regardless of whether any other person becomes or fails to become or ceases to be a Payee under the Promissory Note or hereunder.

Dated: _____

[Signature Page Follows]

[PAYEES], as a Payee

By: _____
Name: _____
Title: _____

[Intentionally Omitted.]

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[Form of]
LANDLORD ACCESS AGREEMENT

THIS LANDLORD ACCESS AGREEMENT (this "**Agreement**") is made and entered into as of _____, by and between _____, having an office at _____ ("**Landlord**"), Healthcare Finance Group, LLC, as the Collateral Agent for the benefit of the lenders (the "**Lenders**") party to the Credit Agreement (as hereinafter defined) (in such capacity, the "**Collateral Agent**").

RECITALS:

- A. Landlord is the record title holder and owner of the real property described in Schedule A attached hereto (the "**Real Property**").
- B. Landlord has leased all or a portion of the Real Property (the "**Leased Premises**") to [] ("**Lessee**") pursuant to a certain lease agreement or agreements described in Schedule B attached hereto (collectively, and as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Lease**").
- C. BioScrip, Inc., a Delaware corporation ("**Borrower**"), the Subsidiary Guarantors party thereto and the Collateral Agent, among others, have entered into an Amended and Restated Credit Agreement, dated as of December 28, 2010 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"; terms used and not otherwise defined herein that are defined in the Credit Agreement shall have the meanings assigned to such terms therein), pursuant to which the Lenders have agreed to make certain loans to Borrower (collectively, the "**Loans**").
- D. [The Lessee is a Subsidiary of Borrower.]
- E. [The Lessee has, pursuant to the Credit Agreement, guaranteed the obligations of Borrower under the Credit Agreement and the other Loan Documents.]¹
- F. As security for the payment and performance of Lessee's Obligations under the Credit Agreement and the other Loan Documents, the Collateral Agent has or will acquire a security interest in and lien upon all of Lessee's personal property, inventory, accounts, goods, machinery, equipment, furniture and fixtures, other than any building fixtures, including, without limitation, HVAC systems (together with all additions, substitutions, replacements and improvements to, and proceeds of, the foregoing, collectively, the "**Personal Property**") for the benefit of the Secured Parties.
- G. The Collateral Agent has requested that Landlord execute this Agreement as a condition precedent to the making of the Loans under the Credit Agreement.

¹ Include if Borrower is not the Lessee.

AGREEMENT:

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord hereby represents, warrants and agrees in favor of the Collateral Agent, as follows:

1. Landlord certifies that (i) Landlord is the landlord under the Lease described in Schedule B attached hereto, (ii) the Lease is in full force and effect and has not been amended, modified or supplemented except as set forth in Schedule B hereto and (iii) Landlord has sent no notice of default to Lessee under the Lease respecting a default which has not been cured by Lessee.

2. Landlord agrees that it will provide the Collateral Agent (via overnight mail at Lessee's cost and expense) with written notice of any default by Lessee under the Lease resulting in termination of the Lease (a "**Default Notice**") at the same time as it sends such notice to the Lessee. The Collateral Agent shall have at least 10 days following receipt of such Default Notice to cure such default, but the Collateral Agent shall not be under any obligation to cure any default by Lessee under the Lease. No action by the Collateral Agent pursuant to this Agreement shall be deemed to be an assumption by the Collateral Agent of any obligation under the Lease, and, except as provided in Sections 3, 5 and 6 below, the Collateral Agent shall not have any obligation to Landlord.

3. Landlord agrees that the Personal Property is and will remain personal property and not fixtures even though it may be affixed to or placed on the Leased Premises. Landlord further agrees that the Collateral Agent has the right to remove the Personal Property from the Leased Premises at any time in accordance with the terms of the Loan Documents; *provided* that the Collateral Agent shall use its commercially reasonable efforts to notify Landlord first and shall repair any damage arising from such removal. Landlord further agrees that it will not hinder the Collateral Agent's actions in removing Personal Property from the Leased Premises or the Collateral Agent's actions in otherwise enforcing its security interest in the Personal Property. The Collateral Agent shall not be liable for any diminution in value of the Leased Premises caused by the absence of Personal Property actually removed or by the need to replace the Personal Property after such removal. Landlord acknowledges that the Collateral Agent shall have no obligation to remove the Personal Property from the Leased Premises.

4. Landlord acknowledges and agrees that Lessee's granting of a security interest in the Personal Property in favor of the Collateral Agent (for the benefit of the Secured Parties) shall not constitute a default under the Lease nor permit Landlord to terminate the Lease or re-enter or repossess the Leased Premises or otherwise be the basis for the exercise of any remedy by Landlord and Landlord hereby expressly consents to the granting of such security interest and agrees that such security interest shall be superior to any lien of the Landlord (statutory or otherwise) in the Personal Property.

5. Upon a termination of the Lease, Landlord will permit the Collateral Agent and its representatives and invitees to occupy and remain on the Leased Premises; *provided* that (a) such period of occupation (the "**Disposition Period**") shall not exceed 180 days following receipt by the Collateral Agent of a Default Notice or, if the Lease has expired by its own terms (absent a default thereunder), up to 60 days following the Collateral Agent's receipt of written notice of such expiration, (b) for the actual period of occupancy by the Collateral Agent, the Applicable Collateral Agent will pay to Landlord the basic rent due under the Lease pro rated on a per diem basis determined on a 30-day month, and shall provide and retain liability and property insurance coverage, electricity and heat to the extent required by the Lease and (c) such amounts paid by the Collateral Agent to Landlord shall exclude any rent adjustments, indemnity payments or similar amounts for which the Lessee remains liable under the Lease for default, holdover status or other similar charges. If any injunction or stay is issued that prohibits the

Collateral Agent from removing the Personal Property, the commencement of the applicable Disposition Period will be deferred until such injunction or stay is lifted or removed.

6. During any Disposition Period, (a) the Collateral Agent and its representatives and invitees may inspect, repossess, remove and otherwise deal with the Personal Property, and the Collateral Agent may advertise and conduct public auctions or private sales of the Personal Property at the Leased Premises, in each case without interference by Landlord or liability of the Collateral Agent or any Lender to Landlord and (b) the Collateral Agent shall make the Leased Premises available for inspection by Landlord and prospective tenants and shall cooperate in Landlord's reasonable efforts to re-lease the Leased Premises. If the Collateral Agent conducts a public auction or private sale of the Personal Property at the Leased Premises, the Collateral Agent shall use reasonable efforts to notify Landlord first and to hold such auction or sale in a manner which would not unduly disrupt Landlord's or any other tenant's use of the Leased Premises.

7. The terms and provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Landlord (including, without limitation, any successor owner of the Real Property) and the Collateral Agent for the benefits of the Secured Parties. Landlord will disclose the terms and conditions of this Agreement to any purchaser or successor to Landlord's interest in the Leased Premises.

8. All notices to any party hereto under this Agreement shall be in writing and sent to such party at its respective address set forth above (or at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section 8) by certified mail, postage prepaid, return receipt requested or by overnight delivery service.

9. The provisions of this Agreement shall continue in effect until Landlord shall have received the Collateral Agent's written certification that the Loans have been paid in full and all of Borrower's other Obligations under the Credit Agreement and the other Loan Documents have been satisfied (exclusive of indemnification obligations which survive this termination of the Loan Documents).

10. THE INTERPRETATION, VALIDITY AND ENFORCEMENT OF THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAW PRINCIPLES THEREOF THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION.

11. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which taken together shall constitute a single agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Landlord and the Collateral Agent have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written.

as Landlord

By: _____

Name:

Title:

HEALTHCARE FINANCE GROUP, LLC, as Collateral Agent

By: _____

Name:

Title:

**Schedule A
To
Landlord Access Agreement
Description of Real Property**

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**Schedule B
To
Landlord Access Agreement
Description of Lease**

<u>Lessor</u>	<u>Lessee</u>	<u>Dated</u>	<u>Modification</u>	<u>Location/ Property Address</u>
---------------	---------------	--------------	---------------------	---------------------------------------

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[Form of]
LC REQUEST¹

[Date]

Healthcare Finance Group, LLC,
as Administrative Agent for
the Lenders referred to below
199 Water Street, 31st Floor
New York, New York 10038
Attention: [Bioscrip Account Manager]

[_____]

Re: *BioScrip, Inc.*

Ladies and Gentlemen:

The undersigned, BioScrip, Inc., a Delaware corporation ("**Borrower**"), hereby makes reference to that certain Amended and Restated Credit Agreement, dated as of December 28, 2010 (as amended, restated, supplemented, waived or otherwise modified from time to time, the "**Credit Agreement**"), among BioScrip, Inc., a Delaware corporation, the Subsidiary Guarantors, the Lenders, Healthcare Finance Group, LLC, as administrative agent, as collateral agent for the Secured Parties and as collateral manager, and other entities party thereto. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement. Borrower hereby gives notice, pursuant to Section 2.18(b) of the Credit Agreement, that Borrower hereby requests the issuance of a Letter of Credit under the Credit Agreement, and in connection therewith sets forth below the information relating to such issuance (the "**Proposed Issuance**"):

- (i) The requested date of the Proposed Issuance: _____
(which is a Business Day)
- (ii) The face amount of the proposed Letter of Credit: \$ _____
- (iii) The requested expiration date of such Letter of Credit: _____
- (iv) The name and address of the beneficiary of such requested Letter of Credit is: _____

¹ NOTE: Subject to review of Issuing Bank.

- (v) The Proposed Issuance is requested for the account of [Borrower] [Subsidiary] (*provided* that Borrower shall remain jointly and severally liable as co-applicant).
- (vi) The requested Letter of Credit shall be issued as a [Standby Letter of Credit] [Commercial Letter of Credit].
- (vii) Any documents to be presented by such beneficiary in connection with any drawing hereunder, including any certificate(s), application or form of such requested Letter of Credit, are attached hereto as Attachment 1 or described therein.

In connection with a request for an amendment, renewal or extension of any outstanding Letter of Credit, Borrower sets forth the information below relating to such proposed amendment, renewal or extension:

- (i) A copy of the outstanding Letter of Credit requested to be amended, renewed or extended is attached hereto as Attachment 2.
- (ii) The proposed date of amendment, renewal or extension thereof: (which shall be a Business Day)
- (iii) The nature of the proposed amendment, renewal or extension is:

The undersigned hereby certifies that the following statements are true and correct on the date hereof, and will be true and correct on the date of the Proposed Issuance or on the date that any amendment, renewal or extension of an outstanding Letter of Credit becomes effective hereunder:

- (A) each of the representations and warranties made by any Loan Party contained in each 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 of the Proposed Issuance, before and after giving effect to the Proposed Issuance requested hereby, 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 were 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;
- (B) no event has occurred and is continuing, or would result from the Proposed Issuance requested hereby, that constitutes a Default or an Event of Default; and
- (C) the LC Exposure does not exceed the LC Commitment and the aggregate amount of Revolving Exposures do not exceed the total Revolving Commitments.

[Signature Page Follows]

Very truly yours,

BIOSCRIP, INC.

By: _____

Name:

Title:

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ATTACHMENT 1
TO
LC REQUEST
[Documents required by Issuing Bank]

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ATTACHMENT 2
TO
LC REQUEST
[Outstanding Letter of Credit]

[Form of]
REVOLVING NOTE

\$[_____]

New York, New York
 [_____]

FOR VALUE RECEIVED, the undersigned, BioScrip, Inc., a Delaware corporation ("**Borrower**"), hereby promises to pay to the order of [_____] or its registered assigns (the "**Lender**") on the Maturity Date (as defined in the Credit Agreement referred to below) in lawful money of the United States and in immediately available funds, the principal amount of the lesser of (a) [_____] DOLLARS and (b) the aggregate unpaid principal amount of all Revolving Loans of the Lender outstanding under the Credit Agreement referred to below at such office set forth in Section 2.14 of the Credit Agreement. Borrower further agrees to pay interest in like money at such office on the unpaid principal amount hereof from time to time at the rates, and on the dates, specified in Section 2.06 of the Credit Agreement. Terms used herein which are defined in the Credit Agreement shall have such defined meanings unless otherwise defined herein.

The holder of this Note may endorse and attach a schedule to reflect the date and amount of each Revolving Loan of the Lender outstanding under the Credit Agreement, and the date and amount of each payment or prepayment of principal hereof; *provided* that the failure of the Lender to make any such recordation (or any error in such recordation) shall not affect the obligations of Borrower hereunder or under the Credit Agreement.

This Note is one of the Notes referred to in the Amended and Restated Credit Agreement, dated as of December 28, 2010 (as amended, restated, supplemented, waived or otherwise modified from time to time, the "**Credit Agreement**"), among BioScrip, Inc., a Delaware corporation, the Subsidiary Guarantors, the lenders party thereto (including the Lender), Healthcare Finance Group, LLC, as administrative agent (in such capacity, the "**Administrative Agent**"), as collateral agent for the Secured Parties and as collateral manager, and other entities party thereto. This Note is subject to the provisions thereof and is subject to optional and mandatory prepayment in whole or in part as provided therein.

This Note is secured and guaranteed as provided in the Credit Agreement and the Security Documents. Reference is hereby made to the Credit Agreement and the Security Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and guarantees, the terms and conditions upon which the security interest and each guarantee was granted and the rights of the holder of this Note in respect thereof.

Upon the occurrence and during the continuation of any one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided therein.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

THIS NOTE MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS OF THE CREDIT AGREEMENT. TRANSFERS OF THIS NOTE MUST BE

RECORDED IN THE REGISTER MAINTAINED BY THE ADMINISTRATIVE AGENT PURSUANT TO THE TERMS OF THE CREDIT AGREEMENT.

THIS NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

BIOSCRIP, INC.,
as Borrower

By: _____
Name:
Title:

H-1-2

[Form of]
SWINGLINE NOTENew York, New York
[]

\$[]

FOR VALUE RECEIVED, the undersigned, BioScrip, Inc., a Delaware corporation ("**Borrower**"), hereby promises to pay to the order of [] or its registered assigns (the "**Lender**") on the Maturity Date (as defined in the Credit Agreement referred to below), in lawful money of the United States and in immediately available funds, the principal amount of the lesser of (a) [] DOLLARS and (b) the aggregate unpaid principal amount of all Swingline Loans made by the Lender to the undersigned pursuant to Section 2.17 of the Credit Agreement referred to below at such office set forth in Section 2.14 of the Credit Agreement. Borrower further agrees to pay interest in like money at such office on the unpaid principal amount hereof from time to time from the date hereof at the rates and on the dates specified in Sections 2.06 and 2.17 of the Credit Agreement. Terms used herein which are defined in the Credit Agreement shall have such defined meanings unless otherwise defined herein.

The holder of this Note may endorse and attach a schedule to reflect the date, the amount of each Swingline Loan and the date and amount of each payment or prepayment of principal thereof; *provided* that the failure of the Lender to make such recordation (or any error in such recordation) shall not affect the obligations of Borrower hereunder or under the Credit Agreement.

This Note is one of the Notes referred to in the Amended and Restated Credit Agreement, dated as of December 28, 2010 (as amended, restated, supplemented, waived or otherwise modified from time to time, the "**Credit Agreement**"), among BioScrip, Inc., a Delaware corporation, the Subsidiary Guarantors, the lenders party thereto (including the Lender), Healthcare Finance Group, LLC, as administrative agent (in such capacity, the "**Administrative Agent**"), as collateral agent for the Secured Parties and as collateral manager, and the other entities party thereto. This Note is subject to the provisions thereof and is subject to optional and mandatory prepayment in whole or in part as provided therein.

This Note is secured and guaranteed as provided in the Credit Agreement, the Security Documents and the other Loan Documents. Reference is hereby made to the Credit Agreement and the Security Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and guarantees, the terms and conditions upon which the security interest and each guarantee was granted and the rights of the holder of this Note in respect thereof.

Upon the occurrence and during the continuation of any one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable as provided in the Credit Agreement.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

THIS NOTE MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS OF THE CREDIT AGREEMENT. TRANSFERS OF THIS NOTE MUST BE RECORDED IN THE REGISTER MAINTAINED BY THE ADMINISTRATIVE AGENT PURSUANT TO THE TERMS OF THE CREDIT AGREEMENT.

THIS NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

BIOSCRIP, INC.,
as Borrower

By: _____

Name:

Title:

H-2-2

PERFECTION CERTIFICATE

Reference is hereby made to (i) that certain Amended and Restated Security Agreement, dated as of December 28, 2010 (the "**Security Agreement**"), among BioScrip, Inc., a Delaware corporation ("**Borrower**"), the subsidiary guarantors party thereto (collectively, the "**Subsidiary Guarantors**") and Healthcare Finance Group, LLC ("**HFG**"), as collateral agent for the benefit of the Secured Parties (in such capacity, the "**Collateral Agent**"), and (ii) that certain Amended and Restated Credit Agreement, dated as of December 28, 2010 (as amended, restated, supplemented, waived or otherwise modified from time to time, the "**Credit Agreement**"), among Borrower, the Subsidiary Guarantors, the Lenders party thereto, the Collateral Agent, HFG, as administrative agent (in such capacity, the "**Administrative Agent**") and as collateral manager, and other entities party thereto. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

The undersigned hereby certify to the Administrative Agent and each of the Secured Parties as follows:

1. **Names.** (a) The exact legal name of each Company, as such name appears in its respective certificate of incorporation or any other organizational document, is set forth in **Schedule 1(a)** hereto. Each Company is (i) the type of entity disclosed next to its name in **Schedule 1(a)** hereto and (ii) a registered organization except to the extent disclosed in **Schedule 1(a)** hereto. Also set forth in **Schedule 1(a)** hereto is the organizational identification number, if any, of each Company that is a registered organization, the Federal Taxpayer Identification Number of each Company and the jurisdiction of formation of each Company.

(b) **Schedule 1(b)** hereto sets forth any other corporate or organizational names each Company has had in the past five years, together with the date of any relevant change.

(c) **Schedule 1(c)** hereto sets forth a list of all other names (including trade names or similar appellations) used by each Company, or any other business or organization to which any Company became the successor by merger, consolidation, acquisition, change in form, nature or jurisdiction of organization or otherwise, at any time during the past five years and the date hereof. **Schedule 1(c)** hereto also sets forth the information required by **Section 1** hereto for any other business or organization to which each Company became the successor by merger, consolidation, acquisition, change in form, nature or jurisdiction of organization or otherwise, at any time during the past five years and the date hereof. Except as set forth in **Schedule 1(c)** hereto, no Company has changed its jurisdiction of organization at any time during the past four months.

2. **Current Locations.** (a) The chief executive office of each Company is located at the address set forth in **Schedule 2(a)** hereto.

(b) **Schedule 2(b)** hereto sets forth all locations where each Company maintains any books or records relating to any Collateral.

(c) **Schedule 2(c)** hereto sets forth all the other places of business of each Company.

(d) **Schedule 2(d)** hereto sets forth all locations not identified on **Schedule 2(c)** hereto where each Company maintains any of the Collateral consisting of inventory or equipment (whether or not in the possession of any Company) except to the extent that the fair market value, individually or in the

aggregate, of inventory and equipment at all locations not identified on **Schedule 2(c)** or **Schedule 2(d)** hereto does not exceed \$100,000.

(e) **Schedule 2(e)** hereto sets forth the names and addresses of all persons or entities other than each Company, such as lessees, consignees, warehousemen or purchasers of chattel paper, which have possession or are intended to have possession of any of the Collateral consisting of instruments, chattel paper, inventory or equipment, except to the extent that the fair market value, individually or in the aggregate (with respect to a particular third party), of instruments, chattel paper, inventory or equipment not identified on **Schedule 2(e)** hereto does not exceed \$100,000.

3. [Reserved]

4. **Extraordinary Transactions.** Except for those purchases, acquisitions and other transactions described on **Schedule 4** hereto, all of the Collateral has been originated by each Company in the ordinary course of business or consists of goods which have been acquired by such Company in the ordinary course of business from a person in the business of selling goods of that kind.

5. **File Search Reports.** **Schedule 5** hereto is a true and accurate summary of file search reports from (i) the Uniform Commercial Code filing offices (x) in each jurisdiction identified on **Schedule 1(a)** or **Schedule 2** with respect to each legal name set forth on **Schedule 1(a)** and **Schedule 1(b)** and (y) in each jurisdiction described in **Schedule 1(c)** hereto or **Schedule 4** hereto relating to any of the transactions described in **Schedule 1(c)** hereto or **Schedule 4** hereto with respect to each legal name of the person or entity from which each Company purchased or otherwise acquired any of the Collateral and (ii) each filing officer in each real estate recording office identified on **Schedule 8** hereto with respect to real estate on which Collateral consisting of fixtures is or is to be located. A true copy of each financing statement, including judgment and tax liens, bankruptcy and pending lawsuits or other filing identified in such file search reports has been delivered to the Collateral Agent.

6. **UCC Filings.** The financing statements (duly authorized by each Company constituting the debtor therein), including the indications of the collateral, attached as **Schedule 6** hereto relating to the Security Agreement or the applicable Mortgage, are in the appropriate forms for filing in the filing offices in the jurisdictions identified in **Schedule 7** hereto.

7. **Schedule of Filings.** **Schedule 7** hereto sets forth (i) the appropriate filing offices for the financing statements attached hereto as **Schedule 6** and (ii) the appropriate filing offices for the filings described in **Schedule 14(c)** hereto and (iii) any other actions required to create, preserve, protect and perfect the security interests in the Collateral granted to the Collateral Agent pursuant to the Security Documents. No other filings or actions are required to create, preserve, protect and perfect the security interests in the Collateral granted to the Collateral Agent pursuant to the Security Documents.

8. **Real Property.** **Schedule 8** hereto sets forth all real property owned or leased by each Company.

9. **Termination Statements.** Attached hereto as **Schedule 9(a)** are the duly authorized termination statements in the appropriate form for filing in each applicable jurisdiction identified in **Schedule 9(b)** hereto with respect to each Lien described therein.

10. **No Change.** The undersigned knows of no anticipated change in any of the circumstances or with respect to any of the matters contemplated in **Sections 1** through **9** and **Sections 11** through **18** of this Perfection Certificate except as set forth on **Schedule 10** hereto.

11. **Stock Ownership and Other Equity Interests.** **Schedule 11** hereto sets forth (i) all the issued and outstanding stock, partnership interests, limited liability company membership interests or other Equity Interests of each Company and the record and beneficial owners of such stock, partnership interests, membership interests or other Equity Interests, and (ii) each equity investment of each Company that represents 50% or less of the equity of the entity in which such investment was made except to the extent such equity investment is held in a Securities Account (as defined in the Security Agreement) set forth on **Schedule 16** hereto.

12. **Instruments and Tangible Chattel Paper.** **Schedule 12** hereto sets forth all promissory notes, instruments (other than checks to be deposited in the ordinary course of business), tangible chattel paper, electronic chattel paper and other evidence of indebtedness held by each Company as of the date hereof, including all intercompany notes between or among any two or more Companies, except to the extent that the amount, individually or in the aggregate, of the items not identified on **Schedule 12** hereto does not exceed \$100,000.

13. **Advances.** **Schedule 13** hereto sets forth (i) the principal balance (on a Company-by-Company basis) of all advances made by any Company to any other Company as of the date hereof (other than those identified on **Schedule 12**), which advances will be on and after the date hereof evidenced by the Intercompany Note pledged to the Collateral Agent under the Security Agreement, and (ii) a true and correct list of all unpaid intercompany transfers of goods sold and delivered by or to any Company as of the date hereof.

14. **Intellectual Property.** (a) **Patents.** **Schedule 14(a)** hereto sets forth all of each Company's Patents issued from, and Patent applications pending in, the United States Patent and Trademark Office ("USPTO"); Patent Licenses recorded in the USPTO; all other Patents issued from, or Patent applications pending in, all patent-granting authorities; all other Patent Licenses, recorded or unrecorded; and including, with respect to each of the foregoing Patents and Patent applications, the name of the owner and the number of each such Patent or Patent application. For purposes of this **Section 14(a)**, the term Patent shall have the meaning given to such term in the Security Agreement.

(b) **Trademarks.** **Schedule 14(b)** hereto sets forth all of each Company's Trademarks registered with, and Trademark applications pending in, the USPTO; Trademark Licenses recorded in the USPTO; all other Trademarks registered with, or Trademark applications pending in, an authority other than the USPTO; all unregistered Trademarks; all other Trademark Licenses, recorded or unrecorded; and including, with respect to each of the foregoing registered Trademarks and Trademark applications, the name of the owner and the number of each such registered Trademark or Trademark application. For purposes of this **Section 14(b)**, the term Trademark shall have the meaning given to such term in the Security Agreement.

(c) **Copyrights.** **Schedule 14(c)** hereto sets forth all of each Company's Copyrights registered with, and Copyright applications pending in, the United States Copyright Office ("USCO"); Copyright Licenses recorded in the USCO; and all other registered or unregistered Copyrights, pending Copyright applications, and recorded or unrecorded Copyright Licenses, including, with respect to each registered Copyright and Copyright application, the name of the owner and the number of each such registered Copyright or Copyright application. For purposes of this **Section 14(c)**, the term Copyright shall have the meaning given to such term in the Security Agreement.

(d) Attached hereto as **Schedule 14(d)** in proper form for filing with the USPTO, USCO and any other administrative body, domestic or foreign, with which a filing is required to be made, are (together with the financing statements attached as **Schedule 6** hereto) the filings necessary to preserve, protect and perfect the security interests in the intellectual property set forth on **Schedule 14(a)** hereto,

Schedule 14(b) hereto, and **Schedule 14(c)** hereto, including duly signed copies of each of the Patent Security Agreement, Trademark Security Agreement and Copyright Security Agreement, as applicable. For purposes of this **Section 14(d)**, the terms Patent Security Agreement, Trademark Security Agreement and Copyright Security Agreement shall have the meanings given to them in the Security Agreement.

15. **Commercial Tort Claims. Schedule 15** hereto sets forth all Commercial Tort Claims (as defined in the Security Agreement) held by each Company, including a brief description thereof, which have a value reasonably believed by the Companies to be, individually or in the aggregate, in excess of \$25,000.

16. **Deposit Accounts, Securities Accounts and Commodity Accounts. Schedule 16(a)** hereto sets forth all Deposit Accounts (as defined in the Security Agreement) maintained by each Company, including the name of each institution where each such account is held, the name of each such account and the name of each entity that holds each account, except to the extent that the amount individually or in the aggregate, of the funds held in all such accounts not identified on **Schedule 16(a)** hereto does not exceed \$100,000. **Schedule 16(b)** hereto sets forth all Lockbox Accounts (as defined in the Security Agreement) maintained by each Company, including the name of each institution where each such account is held, the name of each such account and the name of each entity that holds each account. **Schedule 16(c)** hereto sets forth all Securities Accounts and Commodity Accounts (as defined in the Security Agreement) maintained by each Company, including the name of each institution where each such account is held, the name of each such account and the name of each entity that holds each account, except to the extent that the fair market value and/or amount, as the case may be, individually or in the aggregate, of the financial assets and/or commodity contracts, as the case may be, held in all such accounts not identified on **Schedule 16(c)** hereto does not exceed \$100,000.

17. **Letter-of-Credit Rights. Schedule 17** hereto sets forth all Letters of Credit issued in favor of each Company, as beneficiary thereunder, except to the extent that the face amount, individually or in the aggregate, of all Letters of Credit not identified on **Schedule 17** hereto does not exceed \$100,000.

18. **Motor Vehicles. Schedule 18** hereto sets forth all motor vehicles (covered by certificates of title or ownership) valued, individually or in the aggregate, at over \$1,500,000 and owned by each Company, and the owner and approximate value of such motor vehicles.

Each Company hereby authorizes the Collateral Agent to file financing or continuation statements, and amendments thereto, in all jurisdictions and with all filing offices as the Collateral Agent may determine, in its sole discretion, are necessary or advisable to perfect the security interests granted or to be granted to the Collateral Agent under the Security Agreement. Such financing statements may describe the collateral in the same manner as described in the Security Agreement or may contain an indication or description of collateral that describes such property in any other manner as the Collateral Agent may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in the collateral granted to the Collateral Agent, including, without limitation, describing such property as "all assets" or "all personal property."

Dated: December 28, 2010

[The remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, each of the undersigned executes this Perfection Certificate as of the date first above written.¹

BIOSCRIP, INC.

By: _____
Name: _____
Title: _____

BIOSCRIP INFUSION SERVICES, INC.

By: _____
Name: _____
Title: _____

CHRONIMED LLC

By: _____
Name: _____
Title: _____

BIOSCRIP PHARMACY, INC.

By: _____
Name: _____
Title: _____

BRADHURST SPECIALTY PHARMACY, INC.

By: _____
Name: _____
Title: _____

BIOSCRIP PHARMACY (NY), INC.

By: _____
Name: _____
Title: _____

¹ Signatories to be updated as necessary.

BIOSCRIP PBM SERVICES, LLC

By: _____
Name:
Title:

NATURAL LIVING INC.

By: _____
Name:
Title:

BIOSCRIP INFUSION SERVICES, LLC

By: _____
Name:
Title:

BIOSCRIP NURSING SERVICES, LLC

By: _____
Name:
Title:

BIOSCRIP INFUSION MANAGEMENT, LLC

By: _____
Name:
Title:

BIOSCRIP PHARMACY SERVICES, INC.

By: _____
Name:
Title:

**Schedule 1(a)
to
Perfection Certificate
Legal Names, Etc.**

<u>Legal Name</u>	<u>Type of Entity</u>	<u>Registered Organization (Yes/No)</u>	<u>Organizational Number*</u>	<u>Federal Taxpayer Identification Number</u>	<u>State of Formation</u>
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* If none, so state.

Schedule 1(b)
to
Perfection Certificate
Prior Organizational Names

Company _____

Prior Name

Date of Change

I-1-8

**Schedule 1(c)
to
Perfection Certificate
Other Names; Changes in Corporate Identity**

<u>Company</u>	<u>Corporate Name of Entity</u>	<u>Action</u>	<u>Date of Action</u>	<u>State of Formation</u>	<u>List of All Other Names Used During Past Five Years</u>
----------------	-------------------------------------	---------------	---------------------------	-------------------------------	--

[Add Information required by Section 1 to the extent required by Section 1(c) of the Perfection Certificate]

Schedule 2(a)
to
Perfection Certificate
Chief Executive Offices

Company _____

Address _____

County _____

State _____

I-1-10

Schedule 2(b)
to
Perfection Certificate
Location of Books and Records

Company _____

Address _____

County _____

State _____

I-1-11

Schedule 2(c)
to
Perfection Certificate
Other Places of Business

Company _____

Address _____

County _____

State _____

I-1-12

Schedule 2(d)
to
Perfection Certificate
Additional Locations of Equipment and Inventory

Company _____

Address _____

County _____

State _____

I-1-13

Schedule 2(e)
to
Perfection Certificate
Locations of Collateral in Possession of Persons Other Than Companies

<u>Company</u>	<u>Name of Entity in Possession of Collateral/Capacity of such Entity</u>	<u>Address/Location of Collateral</u>	<u>County</u>	<u>State</u>
----------------	---	---------------------------------------	---------------	--------------

Schedule 4
to
Perfection Certificate
Transactions Other Than in the Ordinary Course of Business

Company _____

**Description of Transaction
Including Parties Thereto**

Date of Transaction

I-1-15

Schedule 5
to
Perfection Certificate
File Search Reports

Company _____

Search Report Dated

Prepared by

Jurisdiction

I-1-16

Schedule 6
to
Perfection Certificate
Copy of Financing Statements to Be Filed

I-1-17

Schedule 7
to
Perfection Certificate
Filings/Filing Offices

Type of Filings*	Entity	Applicable Security Documents^{§§}	Jurisdictions
-------------------------	---------------	---	----------------------

* UCC1 financing statement, fixture filing, mortgage, intellectual property filing or other necessary filing.

§§ Mortgage, Security Agreement or other.

Schedule 8
to
Perfection Certificate
Real Property

<u>Entity of Record</u>	<u>Location Address</u>	<u>Owned or Leased</u>	<u>Landlord/Owner if Leased</u>	<u>Description of Lease Documents</u>
-------------------------	-------------------------	------------------------	---------------------------------	---------------------------------------

I-1-19

Schedule 9(a)
to
Perfection Certificate

Attached hereto is a true copy of each termination statement filing duly acknowledged or otherwise identified by the filing officer.

I-1-20

Schedule 9(b)
to
Perfection Certificate
Termination Statement Filings

<u>Debtor</u>	<u>Jurisdiction</u>	<u>Secured Party</u>	<u>Type of Collateral</u>	<u>UCC1 File Date</u>	<u>UCC1 File Number</u>
---------------	---------------------	----------------------	---------------------------	-----------------------	-------------------------

I-1-21

Schedule 10
to
Perfection Certificate
Changes from Circumstances Described in Perfection Certificate

I-1-22

Schedule 11
to
Perfection Certificate
Stock Ownership and Other Equity Interests

Company: _____

<u>Current Legal Entities Owned</u>	<u>Record Owner</u>	<u>Certificate No.</u>	<u>No. Shares/Interest</u>	<u>Percent Pledged</u>
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I-1-23

Schedule 12
to
Perfection Certificate
Instruments and Tangible Chattel Paper

1. Promissory Notes:

<u>Entity</u>	<u>Principal Amount</u>	<u>Date of Issuance</u>	<u>Interest Rate</u>	<u>Maturity Date</u>
---------------	-------------------------	-------------------------	----------------------	----------------------

2. Chattel Paper:

<u>Entity</u>	<u>Principal Amount</u>	<u>Date of Issuance</u>	<u>Interest Rate</u>	<u>Maturity Date</u>
---------------	-------------------------	-------------------------	----------------------	----------------------

Schedule 13
to
Perfection Certificate
Advances

Description and Date of
Advance

From

To

Description and Date of
Unpaid Intercompany
Transfer of Goods

From

To

I-1-25

Schedule 14(a)
to
Perfection Certificate
Patents and Patent Licenses

UNITED STATES PATENTS:

Issued Patents:

OWNER	PATENT NUMBER	DESCRIPTION
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Applications:

OWNER	APPLICATION NUMBER	DESCRIPTION
-------	--------------------	-------------

Licenses:

LICENSEE	LICENSOR	PATENT/ APPLICATION NUMBER	DESCRIPTION
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Schedule 14(a) (continued)
to
Perfection Certificate

OTHER PATENTS:

Issued Patents:

OWNER	PATENT NUMBER	COUNTRY/STATE	DESCRIPTION
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Applications:

OWNER	APPLICATION NUMBER	COUNTRY/STATE	DESCRIPTION
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Licenses:

LICENSEE	LICENSOR	COUNTRY/STATE	PATENT/ APPLICATION NUMBER	DESCRIPTION
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Schedule 14(b)
to
Perfection Certificate
Trademarks and Trademark Licenses

UNITED STATES TRADEMARKS:

Registrations:

OWNER	REGISTRATION NUMBER	TRADEMARK
_____	_____	_____

Applications:

OWNER	APPLICATION NUMBER	TRADEMARK
_____	_____	_____

Licenses:

LICENSEE	LICENSOR	REGISTRATION/ APPLICATION NUMBER	TRADEMARK
_____	_____	_____	_____

Schedule 14(b) (continued)
to
Perfection Certificate

OTHER TRADEMARKS:

Registrations:

OWNER	REGISTRATION NUMBER	COUNTRY/STATE	TRADEMARK
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Applications:

OWNER	APPLICATION NUMBER	COUNTRY/STATE	TRADEMARK
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Licenses:

LICENSEE	LICENSOR	COUNTRY/STATE	REGISTRATION/ APPLICATION NUMBER	TRADEMARK
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Schedule 14(c)
to
Perfection Certificate
Copyrights and Copyright Licenses

UNITED STATES COPYRIGHTS

Registrations:

OWNER

TITLE

REGISTRATION NUMBER

Applications:

OWNER

APPLICATION NUMBER

Licenses:

LICENSEE

LICENSOR

REGISTRATION/
APPLICATION
NUMBER

DESCRIPTION

Schedule 14(c) (continued)
to
Perfection Certificate

OTHER COPYRIGHTS

Registrations:

OWNER	COUNTRY STATE	TITLE	REGISTRATION NUMBER
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Applications:

OWNER	COUNTRY/STATE	APPLICATION NUMBER
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Licenses:

LICENSEE	LICENSOR	COUNTRY/STATE	REGISTRATION/ APPLICATION NUMBER	DESCRIPTION
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Schedule 14(d)
to
Perfection Certificate
Intellectual Property Filings

I-1-32

Schedule 15
to
Perfection Certificate
Commercial Tort Claims

I-1-33

Schedule 16(a)
to
Perfection Certificate
Deposit Accounts (Other Than Lockbox Accounts)

Owner

Bank

Account Numbers

I-1-34

Schedule 16(b)
to
Perfection Certificate
Lockbox Accounts

Owner

Bank

Account Numbers

I-1-35

Schedule 16(c)
to
Perfection Certificate
Securities Accounts and Commodity Accounts

<u>Owner</u>	<u>Type of Account</u>	<u>Intermediary</u>	<u>Account Numbers</u>

I-1-36

Schedule 17
to
Perfection Certificate
Letter of Credit Rights

I-1-37

Schedule 18
to
Perfection Certificate
Motor Vehicles

I-1-38

PERFECTION CERTIFICATE SUPPLEMENT

Reference is hereby made to (i) that certain Amended and Restated Security Agreement, dated as of December 28, 2010 (the "**Security Agreement**"), among BioScrip, Inc., a Delaware corporation ("**Borrower**"), the subsidiary guarantors party thereto (collectively, the "**Subsidiary Guarantors**") and Healthcare Finance Group, LLC ("**HFG**"), as collateral agent for the benefit of the Secured Parties (in such capacity, the "**Collateral Agent**"), and (ii) that certain Amended and Restated Credit Agreement, dated as of December 28, 2010 (as amended, restated, supplemented, waived or otherwise modified from time to time, the "**Credit Agreement**"), among Borrower, the Subsidiary Guarantors, the Lenders party thereto, the Collateral Agent, HFG, as administrative agent (in such capacity, the "**Administrative Agent**") and as collateral manager, and other entities party thereto. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement. This Perfection Certificate Supplement is delivered pursuant to Section 5.13(b) of the Credit Agreement.

The undersigned¹ hereby certify to the Administrative Agent and each of the Secured Parties that, as of the date hereof, there has been no change in the information described in the Perfection Certificate delivered on the Restatement Date (as supplemented by any perfection certificate supplements delivered prior to the date hereof, the "**Prior Perfection Certificate**"), other than as follows:

1. **Names.** (a) Except as listed on **Schedule 1(a)** hereto, (i) Schedule 1(a) to the Prior Perfection Certificate sets forth the exact legal name of each Company, as such name appears in its respective certificate of incorporation or any other organizational document; (ii) each Company is (x) the type of entity disclosed next to its name in Schedule 1(a) to the Prior Perfection Certificate and (y) a registered organization except to the extent disclosed in Schedule 1(a) to the Prior Perfection Certificate; and (z) Schedule 1(a) to the Prior Perfection Certificate sets forth the organizational identification number, if any, of each Company that is a registered organization, the Federal Taxpayer Identification Number of each Company and the state of formation of each Company.

(b) Except as listed on **Schedule 1(b)** hereto, Schedule 1(b) to the Prior Perfection Certificate sets forth any other corporate or organizational names each Company has had in the past five years, together with the date of the relevant change.

2. **Current Locations.** (a) Except as listed on **Schedule 2(a)** hereto, the chief executive office of each Company is located at the address set forth in Schedule 2(a) to the Prior Perfection Certificate.

(b) Except as listed on **Schedule 2(b)** hereto, Schedule 2(b) to the Prior Perfection Certificate sets forth all locations where each Company maintains any books or records relating to any Collateral.

(c) Except as listed on **Schedule 2(c)** hereto, Schedule 2(c) to the Prior Perfection Certificate sets forth all the other places of business of each Company.

(d) Except as listed on **Schedule 2(d)** hereto, Schedule 2(d) to the Prior Perfection Certificate sets forth all other locations not identified on **Schedule 2(c)** hereto or Schedule 2(c) to the Prior

¹ Insert appropriate officers of the Companies.

Perfection Certificate where each Company maintains any of the Collateral consisting of inventory or equipment (whether or not in the possession of any Company) except to the extent that the fair market value, individually or in the aggregate, of inventory and equipment at all locations not identified on **Schedule 2(c)** or **Schedule 2(d)** hereto and on Schedule 2(c) thereto or Schedule 2(d) thereto does not exceed \$100,000.

(e) Except as listed on **Schedule 2(e)** hereto, Schedule 2(e) to the Prior Perfection Certificate sets forth the names and addresses of all persons or entities other than each Company, such as lessees, consignees, warehousemen or purchasers of chattel paper, which have possession or are intended to have possession of any of the Collateral consisting of instruments, chattel paper, inventory or equipment, except to the extent that the value, individually or in the aggregate (with respect to a particular third party), of instruments, chattel paper, inventory and equipment not identified on **Schedule 2(e)** hereto and Schedule 2(e) thereto does not exceed \$100,000.

3. [Reserved]

4. **Extraordinary Transactions.** Except for those purchases, acquisitions and other transactions described on **Schedule 4** hereto and on Schedule 4 to the Prior Perfection Certificate, all of the Collateral has been originated by each Company in the ordinary course of business or consists of goods which have been acquired by such Company in the ordinary course of business from a person in the business of selling goods of that kind.

5. **File Search Reports.** Except as listed on **Schedule 5** hereto, Schedule 5 to the Prior Perfection Certificate is a true and accurate summary of file search reports from (i) the Uniform Commercial Code filing offices (x) in each jurisdiction identified on **Schedule 1(a)** or **Schedule 2** hereto and thereto with respect to each legal name set forth on **Schedule 1(a)** and **Schedule 1(b)** hereto and thereto and (y) in each jurisdiction described in Schedule 1(c) thereto, or **Schedule 4** hereto or Schedule 4 thereto relating to any of the transactions described in Schedule 1(c) thereto or **Schedule 4** hereto or Schedule 4 thereto with respect to each legal name of the person or entity from which each Company purchased or otherwise acquired any of the Collateral and (ii) each filing officer in each real estate recording office identified on **Schedule 8** hereto or Schedule 8 thereto with respect to real estate on which Collateral consisting of fixtures is or is to be located. Except as listed on **Schedule 5** hereto, Schedule 5 to the Prior Perfection Certificate is a true copy of each financing statement, including judgment and tax liens, bankruptcy and pending lawsuits or other filing identified in such file search reports.

6. **UCC Filings.** Except as set listed on **Schedule 6** hereto, the financing statements (duly authorized by each Company constituting the debtor therein), including the indications of the collateral, relating to the Security Agreement or the applicable Mortgage, are set forth in Schedule 6 to the Prior Perfection Certificate, and are in the appropriate forms for filing in the filing offices in the jurisdictions identified in **Schedule 6** hereto and Schedule 6 thereto.

7. **Schedule of Filings.** Except as listed on **Schedule 7** hereto, Schedule 7 to the Prior Perfection Certificate sets forth (i) the appropriate filing offices for the financing statements attached thereto as Schedule 5 and hereto as **Schedule 5**, (ii) the appropriate filing offices for the filings described in Schedule 13(e) thereto and **Schedule 13(e)** hereto and (iii) any other actions required to create, preserve, protect and perfect the security interests in the Collateral granted to the Collateral Agent pursuant to the Security Documents. No other filings or actions are required to create, preserve, protect and perfect the security interests in the Collateral granted to the Collateral Agent pursuant to the Security Documents.

8. **Real Property.** Except as listed on **Schedule 8** hereto, Schedule 8 to the Prior Perfection Certificate sets forth all real property owned or leased by each Company.

9. **Termination Statements.** Except as listed on **Schedule 9(a)** hereto, Schedule 9(a) to the Prior Perfection Certificate sets forth the duly authorized termination statements in the appropriate form for filing in each applicable jurisdiction identified in **Schedule 9(b)** hereto and Schedule 9(b) thereto with respect to each Lien described therein.

10. **No Change.** The undersigned knows of no anticipated change in any of the circumstances or with respect to any of the matters contemplated in **Sections 1** through **9** and **Sections 11** through **18** hereto except as set forth on **Schedule 10** hereto.

11. **Stock Ownership and other Equity Interests.** Except as listed on **Schedule 11** hereto, Schedule 11 to the Prior Perfection Certificate sets forth (i) all the issued and outstanding stock, partnership interests, limited liability company membership interests or other Equity Interests of each Company and the record and beneficial owners of such stock, partnership interests, membership interests or other Equity Interests and (ii) each equity investment of each Company that represents 50% or less of the equity of the entity in which such investment was made, except to the extent such equity investment is held in a Securities Account (as defined in the Security Agreement) set forth on **Schedule 16(b)** hereto or on Schedule 16(b) to the Prior Perfection Certificate.

12. **Instruments and Tangible Chattel Paper.** Except as listed on **Schedule 12** hereto, Schedule 12 to the Prior Perfection Certificate sets forth all promissory notes, instruments (other than checks to be deposited in the ordinary course of business), tangible chattel paper, electronic chattel paper and other evidence of indebtedness held by each Company as of the date hereof, including all intercompany notes between or among any two or more Companies, except to the extent that the amount, individually or in the aggregate, of the items not identified on **Schedule 12** hereto and Schedule 12 thereto does not exceed \$100,000.

13. **Advances.** Except as listed on **Schedule 13** hereto, Schedule 13 to the Prior Perfection Certificate sets forth (i) the principal balance (on a Company-by-Company basis) of all advances made by any Company to any other Company as of the date hereof (other than those identified on **Schedule 12** hereto or Schedule 12 thereto), which advances will be on and after the date hereof evidenced by the Intercompany Note pledged to the Collateral Agent under the Security Agreement and (ii) all unpaid intercompany transfers of goods sold and delivered by or to any Company as of the date hereof.

14. **Intellectual Property.** (a) **Patents.** Except as listed on **Schedule 14(a)** hereto, Schedule 14(a) to the Prior Perfection Certificate sets forth all of each Company's Patents issued from, and Patent Applications pending in, the United States Patent and Trademark Office ("USPTO"); Patent Licenses recorded in the USPTO; all other Patents issued from, or Patent Applications pending in, all patent-granting authorities; all other Patent Licenses, recorded or unrecorded; and including, with respect to each of the foregoing Patents and Patent Applications, the name of the owner and the number of each such Patent or Patent Application. For purposes of this **Section 14(a)**, the terms Patent, Patent Application, and Patent License shall have the meanings given to them in the Security Agreement.

(b) **Trademarks.** Except as listed on **Schedule 14(b)** hereto, Schedule 14(b) to the Prior Perfection Certificate sets forth all of each Company's Trademarks registered with, and Trademark Applications pending in, the USPTO; Trademark Licenses recorded in the USPTO; all other Trademarks registered with, or Trademark Applications pending in, an authority other than the USPTO; all unregistered Trademarks; all other Trademark Licenses, recorded or unrecorded; and including, with

respect to each of the foregoing registered Trademarks and Trademark Applications, the name of the owner and the number of each such registered Trademark or Trademark Application. For purposes of this **Section 14(b)**, the terms Trademark, Trademark Application, and Trademark License shall have the meanings given to them in the Security Agreement.

(c) **Copyrights**. Except as listed on **Schedule 14(c)** hereto, Schedule 14(c) to the Prior Perfection Certificate sets forth all of each Company's Copyrights registered with, and Copyright Applications pending in, the United States Copyright Office ("**USCO**"); Copyright Licenses recorded in the USCO; and all other registered or unregistered Copyrights, pending Copyright Applications, and recorded or unrecorded Copyright Licenses, including, with respect to each registered Copyright and Copyright Application, the name of the owner and the number of each such registered Copyright or Copyright Application. For purposes of this **Section 14(c)**, the terms Copyright, Copyright Application, and Copyright License shall have the meanings given to them in the Security Agreement.

(d) Except as listed on **Schedule 14(d)** hereto, attached to the Prior Perfection Certificate as Schedule 14(c) in proper form for filing with the USPTO and the USCO are (together with the financing statements attached as **Schedule 6** hereto and Schedule 6 thereto) the filings necessary to preserve, protect and perfect the security interests in the Trademarks, Trademark Licenses, Patents, Patent Licenses, Copyrights and Copyright Licenses set forth on **Schedules 14(a), (b) and (c)** hereto and Schedules 14(a), (b) and (c) thereto, including duly signed copies of each of the Patent Security Agreement, Trademark Security Agreement and the Copyright Security Agreement, as applicable. For purposes of this **Section 14(d)**, the terms Trademarks, Trademark Licenses, Patents, Patent Licenses, Copyrights, Copyright Licenses, Patent Security Agreement, Trademark Security Agreement and Copyright Security Agreement shall have the meanings given to them in the Security Agreement.

15. **Commercial Tort Claims**. Except as listed on **Schedule 15** hereto, Schedule 15 to the Prior Perfection Certificate sets forth all Commercial Tort Claims (as defined in the Security Agreement) held by each Company, including a brief description thereof, which have a value reasonably believed by the Companies to be, individually or in the aggregate, in excess of \$25,000.

16. **Deposit Accounts, Securities Accounts and Commodity Accounts**. Except as listed on **Schedule 16(a)** hereto, Schedule 16(a) to the Prior Perfection Certificate sets forth all Deposit Accounts (as defined in the Security Agreement) maintained by each Company, including the name of each institution where each such account is held, the name of each such account and the name of each entity that holds each account, except to the extent that the amount of the funds, individually or in the aggregate (with respect to any Financial Institution), held in all such accounts not identified on **Schedule 16(a)** hereto and Schedule 16(a) thereto does not exceed \$100,000. Except as listed on **Schedule 16(b)** hereto, Schedule 16(b) to the Prior Perfection Certificate sets forth all Lockbox Accounts (as defined in the Security Agreement) maintained by each Company, including the name of each institution where each such account is held, the name of each such account and the name of each entity that holds each account. Except as listed on **Schedule 16(c)** hereto, Schedule 16(c) to the Prior Perfection Certificate sets forth all Securities Accounts and Commodity Accounts (as defined in the Security Agreement) maintained by each Company, including the name of each institution where each such account is held, the name of each such account and the name of each entity that holds each account, except to the extent that the fair market value and/or amount, as the case may be, individually or in the aggregate, of the financial assets and/or commodity contracts, as the case may be, held in all such accounts not identified on **Schedule 16(c)** hereto and Schedule 16(c) to the Prior Perfection Certificate does not exceed \$100,000.

17. **Letter-of-Credit Rights**. Except as listed on **Schedule 17** hereto, Schedule 17 to the Perfection Certificate sets forth all Letters of Credit issued in favor of each Company, as beneficiary

thereunder, except to the extent that the face amount, individually or in the aggregate, of all Letters of Credit not identified on **Schedule 17** hereto does not exceed \$100,000.

18. **Motor Vehicles.** Except as listed on **Schedule 18** hereto, Schedule 18 to the Prior Perfection Certificate sets forth all motor vehicles (covered by certificates of title or ownership) valued at over \$1,500,000 and owned by each Company, and the owner and approximate value of such motor vehicles.

Each Company hereby authorizes the Collateral Agent to file financing or continuation statements, and amendments thereto, in all jurisdictions and with all filing offices as the Collateral Agent may determine, in its sole discretion, are necessary or advisable to perfect the security interests granted or to be granted to the Collateral Agent under the Security Agreement. Such financing statements may describe the collateral in the same manner as described in the Security Agreement or may contain an indication or description of collateral that describes such property in any other manner as the Collateral Agent may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in the collateral granted to the Collateral Agent, including, without limitation, describing such property as "all assets" or "all personal property."

Dated: [_____]

[The remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, each of the undersigned executes this Perfection Certificate Supplement as of the date first above written.

[_____]

By: _____
Name:
Title:

[_____]

By: _____
Name:
Title:

[_____]

By: _____
Name:
Title:

Schedule 1(a)
To
Perfection Certificate Supplement
Legal Names, Etc.

<u>Legal Name</u>	<u>Type of Entity</u>	<u>Registered Organization (Yes/No)</u>	<u>Organizational Number*</u>	<u>Federal Taxpayer Identification Number</u>	<u>State of Formation</u>
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* If none, so state.

Schedule 1(b)
To
Perfection Certificate Supplement
Prior Organizational Names

Company

Prior Name

Date of Change

I-2-8

Schedule 2(a)
To
Perfection Certificate Supplement
Chief Executive Offices

Company

Address

County

State

I-2-9

Schedule 2(b)
To
Perfection Certificate Supplement
Location of Books and Records

Company

Address

County

State

I-2-10

Schedule 2(c)
To
Perfection Certificate Supplement
Other Places of Business

Company _____

Address _____

County _____

State _____

I-2-11

Schedule 2(d)
To
Perfection Certificate Supplement
Additional Locations of Equipment and Inventory

Company

Address

County

State

I-2-12

Schedule 2(e)
To
Perfection Certificate Supplement
Locations of Collateral in Possession of Persons Other Than Companies

<u>Company</u>	<u>Name of Entity in Possession of Collateral/Capacity of such Entity</u>	<u>Address/Location of Collateral</u>	<u>County</u>	<u>State</u>
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Schedule 4
To
Perfection Certificate Supplement
Transactions Other Than in the Ordinary Course of Business

Company

**Description of Transaction
Including Parties Thereto**

Date of Transaction

I-2-14

Schedule 5
To
Perfection Certificate Supplement
File Search Reports

Company

Search Report Dated

Prepared by

Jurisdiction

I-2-15

Schedule 6
To
Perfection Certificate Supplement
Copy of Financing Statements To Be Filed

I-2-16

Schedule 7
To
Perfection Certificate Supplement
Filings/Filing Offices

Type of Filings*	Entity	Applicable Security Document**	Jurisdictions
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* UCC1 financing statement, fixture filing, mortgage, intellectual property filing or other necessary filing.

*** Mortgage, Security Agreement or other.

Schedule 8
To
Perfection Certificate Supplement
Real Property

Entity of Record

Location Address

Owned or
Leased

Landlord/Owner if
Leased

Description of
Lease Documents

I-2-18

Schedule 9(a)
To
Perfection Certificate Supplement

Attached hereto is a true copy of each termination statement filing duly acknowledged or otherwise identified by the filing officer.

I-2-19

Schedule 9(b)
To
Perfection Certificate Supplement
Termination Statement Filings

<u>Debtor</u>	<u>Jurisdiction</u>	<u>Secured Party</u>	<u>Type of Collateral</u>	<u>UCC1 File Date</u>	<u>UCC1 File Number</u>
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1-2-20

Schedule 10
To
Perfection Certificate Supplement
Changes from Circumstances Described in Prior Perfection Certificate

I-2-21

Schedule 11
To
Perfection Certificate Supplement
Stock Ownership and Other Equity Interests

Company: _____

<u>Current Legal Entities Owned</u>	<u>Record Owner</u>	<u>Certificate No.</u>	<u>No. Shares/Interest</u>	<u>Percent Pledged</u>
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I-2-22

Schedule 12
To
Perfection Certificate Supplement
Instruments and Tangible Chattel Paper

1. Promissory Notes:

<u>Entity</u>	<u>Principal Amount</u>	<u>Date of Issuance</u>	<u>Interest Rate</u>	<u>Maturity Date</u>
---------------	-------------------------	-------------------------	----------------------	----------------------

2. Chattel Paper:

I-2-23

Schedule 13
To
Perfection Certificate Supplement
Advances

Description
and Date of Advance

From

To

Description and Date of
Unpaid Intercompany
Transfer of Goods

From

To

I-2-24

Schedule 14(a)
To
Perfection Certificate Supplement
Patents and Patent Licenses

UNITED STATES PATENTS:

Issued Patents:

OWNER	PATENT NUMBER	DESCRIPTION
_____	_____	_____

Applications:

OWNER	APPLICATION NUMBER	DESCRIPTION
_____	_____	_____

Licenses:

LICENSEE	LICENSOR	PATENT/ APPLICATION NUMBER	DESCRIPTION
_____	_____	_____	_____

Schedule 14(a).(continued)
To
Perfection Certificate Supplement

OTHER PATENTS:

Issued Patents:

OWNER	PATENT NUMBER	COUNTRY/STATE	DESCRIPTION
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Applications:

OWNER	APPLICATION NUMBER	COUNTRY/STATE	DESCRIPTION
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Licenses:

LICENSEE	LICENSOR	COUNTRY/STATE	PATENT/ APPLICATION NUMBER	DESCRIPTION
----------	----------	---------------	----------------------------------	-------------

Schedule 14(b)
To
Perfection Certificate Supplement
Trademarks and Trademark Licenses

UNITED STATES TRADEMARKS:

Registrations:

OWNER	REGISTRATION NUMBER	TRADEMARK
_____	_____	_____

Applications:

OWNER	APPLICATION NUMBER	TRADEMARK
_____	_____	_____

Licenses:

LICENSEE	LICENSOR	REGISTRATION/ APPLICATION NUMBER	TRADEMARK
_____	_____	_____	_____

Schedule 14(b) (continued)
To
Perfection Certificate Supplement

OTHER TRADEMARKS:

Registrations:

OWNER	REGISTRATION NUMBER	COUNTRY/STATE	TRADEMARK
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Applications:

OWNER	APPLICATION NUMBER	COUNTRY/STATE	TRADEMARK
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Licenses:

LICENSEE	LICENSOR	COUNTRY/STATE	REGISTRATION/ APPLICATION NUMBER	TRADEMARK
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Schedule 14(c)
To
Perfection Certificate Supplement
Copyrights and Copyright Licenses

UNITED STATES COPYRIGHTS

Registrations:

OWNER	TITLE	REGISTRATION NUMBER
_____	_____	_____

Applications:

OWNER	APPLICATION NUMBER
_____	_____

Licenses:

LICENSEE	LICENSOR	REGISTRATION/ APPLICATION NUMBER	DESCRIPTION
_____	_____	_____	_____

Schedule 14(c).(continued)
To
Perfection Certificate Supplement

OTHER COPYRIGHTS

Registrations:

OWNER	COUNTRY STATE	TITLE	REGISTRATION NUMBER
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Applications:

OWNER	COUNTRY/STATE	APPLICATION NUMBER
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Licenses:

LICENSEE	LICENSOR	COUNTRY/STATE	REGISTRATION/ APPLICATION NUMBER	DESCRIPTION
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Schedule 14(d)
To
Perfection Certificate Supplement
Intellectual Property Filings

I-2-31

Schedule 15
To
Perfection Certificate Supplement
Commercial Tort Claims

I-2-32

Schedule 16(a)
To
Perfection Certificate Supplement
Deposit Accounts (Other Than Lockbox Accounts)

OWNER

BANK

ACCOUNT NUMBERS

I-2-33

Schedule 16(b)
To
Perfection Certificate Supplement
Lockbox Accounts

OWNER

BANK

ACCOUNT NUMBERS

I-2-34

Schedule 16(c)
To
Perfection Certificate Supplement
Securities Accounts and Commodity Accounts

OWNER

TYPE OF ACCOUNT

INTERMEDIARY

ACCOUNT NUMBERS

I-2-35

Schedule 17
To
Perfection Certificate Supplement
Letter of Credit Rights

I-2-36

Schedule 18
To
Perfection Certificate Supplement
Motor Vehicles

I-2-37

[Form of Security Agreement — see document [_____]]

[Form of]
NON-BANK CERTIFICATE

Reference is made to the Amended and Restated Credit Agreement, dated as of December 28, 2010 (as amended, restated, supplemented, waived or otherwise modified from time to time, the "**Credit Agreement**"), among BioScrip, Inc., a Delaware corporation, the Subsidiary Guarantors, the Lenders, Healthcare Finance Group, LLC, as administrative agent, as collateral agent for the Secured Parties, and as collateral manager, and other entities party thereto. Capitalized terms used but not defined herein shall have the meaning assigned to such terms in the Credit Agreement.

Pursuant to Section 2.15(e) of the Credit Agreement, the undersigned is not a bank (as such term is used in Section 881(c)(3)(A), of the Internal Revenue Code of 1986, as amended).

[NAME OF LENDER]

By: _____
Name:
Title:

[ADDRESS]

Dated: _____, 20__

[Intentionally Omitted.]

L-1

[Form of]
SUPPLIER INTERCREDITOR AGREEMENT

This INTERCREDITOR AGREEMENT, dated as of [] (this "**Agreement**"), is between Healthcare Finance Group, LLC, as agent for the First Priority Secured Parties (as defined below) (in such capacity, the "**First Priority Agent**"), and [], a [Delaware] corporation ("**Supplier**").

PRELIMINARY STATEMENT

Reference is made to (a) the Amended and Restated Credit Agreement, dated as of December 28, 2010 (as amended, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "**First Priority Debt Agreement**"), among BioScrip, Inc., a Delaware corporation (the "**Company**"), the lenders from time to time party thereto (the "**First Priority Creditors**"), the subsidiary guarantors of the Company from time to time party thereto, Healthcare Finance Group, LLC, as administrative agent for the First Priority Creditors, as collateral agent for the First Priority Secured Parties and as collateral manager, and other entities party thereto, (b) the Amended and Restated Security Agreement, dated as of December 28, 2010 (as amended, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "**First Priority Security Agreement**"), among the Company, the subsidiaries of the Company from time to time party thereto, and the First Priority Agent, (c) the other Loan Documents as defined, and referred to, in the First Priority Debt Agreement, and (d) [insert description of supplier agreements] (as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof, the "**Prime Vendor Agreement**"), between by Supplier and the Company and certain subsidiaries of the Company.

RECITALS

A. Pursuant to the Prime Vendor Agreement, the Grantors (as hereinafter defined) granted Supplier a lien in all of their existing and future inventory and accounts and proceeds thereof (including insurance proceeds).

B. The First Priority Creditors have agreed to make loans and other extensions of credit to the Company pursuant to the First Priority Debt Agreement (in an aggregate committed principal amount, as of the Restatement Date, of \$150,000,000, subject to the terms and conditions contained therein and in the other Loan Documents) on the condition, among others, that the First Priority Claims (such term and each other capitalized term used but not defined in the preliminary statement or these recitals having the meaning given it in Article I) shall be secured by first priority Liens on, and security interests in, substantially all of the assets of the Company (including the Collateral), and that the priority of the Liens securing the First Priority Claims be senior and prior to the Liens securing the Second Priority Claims.

C. Supplier has agreed to the subordination of Liens securing the Company's obligations under the Second Priority Financing Documents to the Liens securing the First Priority Claims, upon the terms and subject to the conditions set forth in this Agreement.

D. The First Priority Debt Agreement requires, among other things, that the First Priority Collateral Agent and Supplier set forth in this Agreement, among other things, their respective rights, obligations and remedies with respect to the Collateral.

Accordingly, the parties hereto agree as follows:

ARTICLE I

Definitions

SECTION 1.01. Certain Defined Terms. Capitalized terms used in this Agreement and not otherwise defined herein shall, except to the extent the context otherwise requires, have the meanings set forth in the First Priority Debt Agreement (as in effect on the date hereof) or the First Priority Security Agreement (as in effect on the date hereof), as applicable.

SECTION 1.02. Other Defined Terms. As used in this Agreement, the following terms shall have the meanings specified below:

“**Agreement**” shall have the meaning assigned to such term in the preamble hereto.

“**Bankruptcy Code**” shall mean Title 11 of the United States Code entitled “Bankruptcy,” as now and hereinafter in effect, or any successor statute.

“**Bankruptcy Law**” shall mean the Bankruptcy Code and any other Federal, state or foreign bankruptcy, insolvency, receivership or similar law.

“**Collateral**” shall mean, collectively, all Second Priority Collateral that is (or purports to be or, pursuant to the terms hereof or any of the First Priority Debt Documents, is required to be) part of the First Priority Collateral.

“**Company**” shall have the meaning assigned to such term in the preliminary statement to this Agreement.

“**Debt Documents**” shall mean the First Priority Debt Documents and the Second Priority Financing Documents.

“**DIP Financing**” shall have the meaning assigned to such term in [Section 5.01\(a\)](#).

“**DIP Financing Liens**” shall have the meaning assigned to such term in [Section 5.01\(a\)](#).

“**Discharge of First Priority Claims**” shall mean, subject to [Sections 6.01](#) and [6.02](#), (a) payment in full in cash of the principal of and interest (including interest accruing during the pendency of any Insolvency or Liquidation Proceeding, regardless of whether allowed or allowable in such Insolvency or Liquidation Proceeding) and premium, if any, on all Indebtedness outstanding under the First Priority Debt Documents to the extent constituting First Priority Claims, (b) payment in full in cash of all other First Priority Claims that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid, (c) cancellation of or the entry into collateralization arrangements satisfactory to the First Priority Agent and the Issuing Bank with respect to all Letters of Credit issued and outstanding under the First Priority Debt Agreement, and (d) the termination or expiration of all commitments to lend and all obligations to issue or extend Letters of Credit under the First Priority Debt Agreement; *provided, further*, that, with respect to each First Priority Creditor’s First Priority Claims, the acceptance by such First Priority (in its absolute discretion) of non-cash consideration in exchange for its First Priority Claims (or applicable specified portion thereof), coupled with a written acknowledgment of discharge in form and substance satisfactory to such First Priority

Creditor, shall also constitute, subject to Section 6.02, a Discharge of First Priority Claims only with respect to such exchanged First Priority Claims relating to such First Priority Creditor.

"Discharge of Second Priority Claims" shall mean, subject to Section 6.02, payment in full in cash of all Indebtedness outstanding under the Second Priority Financing Documents to the extent constituting Second Priority Claims and the termination of all Second Priority Financing Documents.

"Disposition" shall mean any sale, lease, exchange, transfer or other disposition. **"Dispose"** shall have a correlative meaning.

"First Priority Agent" shall have the meaning assigned to such term in the preamble to this Agreement.

"First Priority Claims" shall mean (i) the due and punctual payment of (A) the principal of and interest (including interest accruing during the pendency of any Insolvency or Liquidation Proceeding, regardless of whether allowed or allowable in such proceeding) on the loans and other advances outstanding under the First Priority Debt Agreement, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, (B) each payment required to be made by the Company under the First Priority Debt Agreement in respect of any Letter of Credit, including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide cash collateral, and (C) all other monetary obligations of the Company to any of the First Priority Secured Parties under the First Priority Debt Agreement and each of the other First Priority Debt Documents, including fees (including any early termination or prepayment fees), costs, expenses (including fees and expenses of counsel) and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any Insolvency or Liquidation Proceeding, regardless of whether allowed or allowable in such proceeding), (ii) the due and punctual performance of all other obligations of the Company under or pursuant to the First Priority Debt Agreement and each of the other First Priority Debt Documents, and (iii) the due and punctual payment and performance of all the obligations of each other Grantor under or pursuant to the First Priority Debt Agreement and each of the other First Priority Debt Documents.

"First Priority Collateral" shall mean, collectively, all "Collateral", as defined in each of the First Priority Debt Agreement and/or in any other First Priority Debt Document, including all property of any Grantor now or at any time hereafter subject to Liens securing any First Priority Claims.

"First Priority Creditors" shall have the meaning assigned to such term in the preliminary statement of this Agreement.

"First Priority Debt Agreement" shall have the meaning assigned to such term in the preliminary statement of this Agreement.

"First Priority Debt Documents" shall mean the "Loan Documents" as defined in the First Priority Debt Agreement.

"First Priority Liens" shall mean all Liens on the First Priority Collateral securing the First Priority Claims, whether created under the First Priority Security Documents or acquired by possession, statute (including any judgment lien), operation of law, subrogation or otherwise.

"First Priority Secured Parties" shall mean, at any time, (a) the First Priority Creditors, (b) the First Priority Agent, (d) the Issuing Bank, (e) each other Person to whom any of the First Priority Claims is owed (including any Affiliate of a First Priority Creditor to whom any First Priority Claims of the type described in clause (b) of the definition thereof is owed) and (f) the successors and assigns of each of the foregoing.

"First Priority Security Agreement" shall have the meaning assigned to such term in the preliminary statement of this Agreement.

"First Priority Security Documents" shall mean the First Priority Debt Agreement, the First Priority Security Agreement and any other agreement, document or instrument pursuant to which a Lien is granted by any Grantor to secure any First Priority Claims or under which rights or remedies with respect to any such Lien are governed.

"Grantors" shall mean the Company and each of its Subsidiaries that shall have created or purported to create any First Priority Lien or Second Priority Lien on all or any part of its assets to secure any First Priority Claims or any Second Priority Claims, and each other Person that shall have created or purported to create any First Priority Lien or Second Priority Lien on all or any part of its assets to secure any First Priority Claims or any Second Priority Claims.

"Guarantors" shall mean, collectively, each Grantor that has guaranteed, or that may from time to time hereafter guarantee, the First Priority Claims or the Second Priority Claims, whether by executing and delivering the First Priority Debt Agreement, the First Priority Security Agreement, the Second Priority Financing Agreement and a supplement thereto or otherwise.

"Indebtedness" shall mean and includes all obligations that constitute "Indebtedness" as defined in the First Priority Debt Agreement.

"Insolvency or Liquidation Proceeding" shall mean (a) any voluntary or involuntary proceeding under the Bankruptcy Code or any other Bankruptcy Law with respect to any Grantor, (b) any voluntary or involuntary appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Grantor or for a substantial part of the property or assets of any Grantor, (c) any voluntary or involuntary winding-up or liquidation of any Grantor, or (d) a general assignment for the benefit of creditors by any Grantor.

"Issuing Bank" shall mean the "Issuing Lender" as defined in the First Priority Debt Agreement.

"Letter of Credit" shall mean a "Letter of Credit" as defined in the First Priority Debt Agreement.

"Lien" shall mean, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third Person with respect to such securities.

"Liquidation Sale" shall mean a so-called bulk sale, liquidation sale or "going out of business sale" conducted either by any Secured Party or a Grantor in respect to all or a substantial portion of such Grantor's Collateral following the occurrence and during the continuance of a

Default or an Event of Default under, and as defined in, either the First Priority Debt Documents or Second Priority Financing Documents.

"New First Priority Agent" shall have the meaning assigned to such term in Section 6.01.

"New First Priority Claims" shall have the meaning assigned to such term in Section 6.01.

"New First Priority Debt Documents" shall have the meaning assigned to such term in Section 6.01.

"Pledged or Controlled Collateral" shall have the meaning assigned to such term in Section 6.04.

"Prime Vendor Agreement" shall have the meaning assigned to such term in the preliminary statement of this Agreement.

"Refinance" shall mean, in respect of any Indebtedness, to refinance, extend, renew, restructure (including by the amendment and restatement of any instrument or agreement evidencing such Indebtedness) or replace or to issue other Indebtedness in exchange or replacement for, such Indebtedness, in whole or in part. **"Refinanced"** and **"Refinancing"** shall have correlative meanings.

"Refinancing Notice" shall have the meaning assigned to such term in Section 6.01.

"Release" shall have the meaning assigned to such term in Section 3.04.

"Second Priority Financing Documents" shall mean the Prime Vendor Agreement and any other agreement, instrument, certificate or other document pursuant to which any Grantor grants (or purports to grant) a security interest in or a Lien on any property of any Grantor now or at any time hereafter.

"Second Priority Claims" shall mean all Indebtedness of the Grantors under the Second Priority Financing Documents.

"Second Priority Collateral" shall mean, collectively, all "Collateral", as defined in the Prime Vendor Agreement, including all property of any Grantor now or at any time hereafter subject to Liens securing any Second Priority Claims; *provided*, that as of the date hereof, the "Second Priority Collateral" shall, exclusively, be comprised of all assets of Grantors described in Recital A of this Agreement, wherever located, now owned or hereafter acquired or arising.

"Second Priority Creditors" shall mean [Supplier], [] and its successors and assigns.

"Second Priority Liens" shall mean all Liens on the Second Priority Collateral securing the Second Priority Claims created under the Second Priority Financing Documents or acquired by assignment, and shall not include any judgment Liens acquired through the exercise by Supplier of any rights or remedies as an unsecured creditor (except to the extent, and only to the extent, that such judgment Liens relate to, or are applicable to, the Second Priority Collateral).

"Second Priority Permitted Actions" shall have the meaning assigned to such term in [Section 3.01\(a\)](#).

"Second Priority Secured Parties" shall mean, at any time, (a) the Second Priority Creditors, (b) each other Subsidiary or Affiliate of any Second Priority Creditor to whom any of the Second Priority Claims (including indemnification obligations) is owed and (c) the successor and assigns of each of the foregoing.

"Secured Parties" shall mean, as the context may require, the First Priority Secured Parties and/or the Second Priority Secured Parties.

"Standstill Period" shall have the meaning assigned to such term in [Section 3.02\(a\)](#).

"Uniform Commercial Code" or **"UCC"** shall mean the Uniform Commercial Code (or any similar or equivalent legislation) as in effect from time to time in any applicable jurisdiction.

SECTION 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified, (b) any reference herein (i) to any Person shall be construed to include such Person's successors and assigns and (ii) to the Company or any other Grantor shall be construed to include the Company or such Grantor as debtor and debtor-in-possession and any receiver or trustee for the Company or any other Grantor, as the case may be, in any Insolvency or Liquidation Proceeding or Liquidation Sale, (c) the word "remedies" shall be construed to refer to all remedies (whether at law, equity or otherwise, including under contract (including netting, set-off or similar remedies)), statute or regulation or otherwise, (d) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles or Sections shall be construed to refer to Articles or Sections of this Agreement and (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

ARTICLE II

Lien Priorities

SECTION 2.01. Relative Priorities. Notwithstanding the date, manner or order of grant, attachment or perfection of any Second Priority Lien and any First Priority Lien, and notwithstanding any provision of the UCC or any other applicable law or the provisions of any First Priority Debt Agreement, First Priority Security Agreement or Second Priority Financing Agreement or any other circumstance whatsoever, the parties hereby agree that so long as the Discharge of First Priority Claims has not occurred, (i) any First Priority Lien (to the extent perfected) on any Collateral now or hereafter held by or for the benefit of any First Priority Secured Party shall be senior in right, priority, operation, effect and all other respects to any and all Second Priority Liens on any Collateral, and (ii) any Second Priority Lien on any Collateral now or hereafter held by or for the benefit of any Second Priority Secured Party shall be junior

and subordinate in right, priority, operation, effect and all other respects to any and all First Priority Liens (to the extent perfected) on any Collateral, and the First Priority Liens (to the extent perfected) on any Collateral shall be and remain senior in right, priority, operation, effect and all other respects to any Second Priority Liens on any Collateral for all purposes, whether or not any First Priority Liens on any Collateral are subordinated in any respect to any other Lien held by any Person (other than the Second Priority Secured Parties) securing any other obligation of the Company, any other Grantor or any other Person; *provided, however*, for the avoidance of doubt, nothing herein contained shall be deemed a subordination in right of payment of the Second Priority Claims to the First Priority Claims.

SECTION 2.02. Prohibition on Contesting Liens. Supplier, for itself and on behalf of the other Second Priority Secured Parties, hereby agrees that it will not, and hereby waives any right to, contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the priority, validity or enforceability of any First Priority Lien. First Priority Agent, for itself and on behalf of the other First Priority Secured Parties, hereby agrees that it will not, and hereby waives any right to, contest, or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding) the priority (subject to the terms hereof governing relative priorities) validity or enforceability of any Second Priority Lien.

SECTION 2.03. Common Collateral. The parties hereto acknowledge and agree that it is their intention that the Second Priority Collateral be included within the First Priority Collateral and that, without limiting the foregoing, no portion of the Second Priority Collateral shall not be a part of the First Priority Collateral. In furtherance of the foregoing, the parties hereto agree to cooperate in good faith in order to determine, upon any reasonable request by the First Priority Agent or Supplier, the specific assets included in the First Priority Collateral and the Second Priority Collateral, the steps taken to perfect the First Priority Liens and the Second Priority Liens thereon and the identity of the respective parties obligated under the First Priority Debt Documents and the Second Priority Financing Documents in respect of the First Priority Claims and the Second Priority Claims, respectively and, to the extent that any portion of the Second Priority Collateral is not included within the First Priority Collateral at any time, without limiting any other right or remedy available to the First Priority Agent or the other First Priority Secured Parties, Supplier, for itself and on behalf of the other Second Priority Secured Parties, agrees that any amounts received by or distributed to any Second Priority Secured Party pursuant to or as a result of any Lien in such Second Priority Collateral shall be subject to Section 4.02. In addition, in furtherance of the foregoing, without the prior written consent of the First Security Priority Agent, no Second Priority Financing Document may be amended, supplemented or otherwise modified, or entered into, to the extent such amendment, supplement or modification, or the terms of such new Second Priority Financing Document, would (i) contravene the provisions of this Agreement or (ii) increase, expand or otherwise add to the Second Priority Collateral.

ARTICLE III

Enforcement of Rights; Matters Relating to Collateral

SECTION 3.01. Exercise of Rights and Remedies. (a) So long as the Discharge of First Priority Claims has not occurred, whether or not any Insolvency or Liquidation Proceeding or Liquidation Sale has been commenced, the First Priority Agent and the other First Priority Secured Parties shall have the exclusive right to enforce rights and exercise remedies

with respect to the Collateral (including making determinations regarding the release, Disposition or restrictions with respect to the Collateral), or to commence or seek to commence any action or proceeding with respect to such rights or remedies (including any foreclosure action or proceeding or any Insolvency or Liquidation Proceeding or Liquidation Sale), in each case, without any consultation with or the consent of any Second Priority Secured Party except as required pursuant to applicable law; *provided* that, notwithstanding the foregoing, (i) in any Insolvency or Liquidation Proceeding, the Second Priority Secured Parties may file a proof of claim or statement of interest with respect to the Second Priority Claims; (ii) the Second Priority Secured Parties may take any action to preserve or protect the validity and enforceability of the Second Priority Liens, *provided* that no such action is, or could reasonably be expected to be, (A) materially adverse to the First Priority Liens or the rights of the First Priority Secured Parties as secured creditors or any other First Priority Secured Party to exercise remedies as secured creditors in respect thereof or (B) otherwise inconsistent with the terms of this Agreement, including the automatic release of Second Priority Liens provided in [Section 3.04](#); (iii) the Second Priority Secured Parties may file any responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the Second Priority Secured Parties, including any claims secured by the Collateral or otherwise make any agreements or file any motions pertaining to the Second Priority Claims, in each case, to the extent not inconsistent with the terms of this Agreement; (iv) the Second Priority Secured Parties may exercise rights and remedies as unsecured creditors, as provided in [Section 3.03\(a\)](#); and (v) subject to [Section 3.02\(a\)](#), the Second Priority Agent and the other Second Priority Secured Parties may enforce any of their rights and exercise any of their remedies with respect to the Collateral after the termination of the Standstill Period (the actions described in this proviso being referred to herein as the "**Second Priority Permitted Actions**"). Except for the Second Priority Permitted Actions, unless and until the Discharge of First Priority Claims has occurred, the sole right of the Second Priority Secured Parties with respect to the Collateral shall be to receive the proceeds of the Collateral, if any, remaining after the Discharge of First Priority Claims has occurred and in accordance with the Second Priority Financing Documents and applicable law.

(b) In exercising rights and remedies with respect to the Collateral, subject to applicable law (including all provisions of the UCC applicable thereto), the First Priority Agent and the other First Priority Secured Parties may enforce the provisions of the First Priority Debt Documents and exercise remedies thereunder, all in such order, without notice (except as required by applicable law (including all provisions of the UCC applicable thereto)) to any Second Priority Secured Creditor and in such manner as they may determine in their sole discretion (*provided* that, without limiting the foregoing, the First Priority Agent shall use its commercially reasonable efforts to provide Supplier with subsequent notice thereof). Such exercise and enforcement shall include the rights of an agent appointed by them to Dispose of Collateral upon foreclosure, to incur expenses in connection with any such Disposition and to exercise all the rights and remedies of a secured creditor under and in accordance with the Uniform Commercial Code, the Bankruptcy Code or any other Bankruptcy Law.

(c) In exercising rights and remedies with respect to the Collateral, the Second Priority Secured Parties may enforce the provisions of the Second Priority Financing Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in their sole discretion, in each case, to the extent that such enforcement or exercise is not otherwise prohibited by clauses (a) and (b) of this [Section 3.01](#). Such exercise and enforcement shall, in each case, to the extent that such enforcement or exercise is not otherwise prohibited by clauses (a) and (b) of this [Section 3.01](#), include the rights of an agent appointed by

them to Dispose of Collateral upon foreclosure, to incur expenses in connection with any such Disposition and to exercise all the rights and remedies of a secured creditor under the Uniform Commercial Code, the Bankruptcy Code or any other Bankruptcy Law. Supplier agrees to provide at least 5 Business Days' prior written notice to the First Priority Agent of its intention to foreclose upon or Dispose of any Collateral; *provided, however*, that the failure to give any such notice shall not in any way limit its ability to foreclose upon or Dispose of any Collateral to the extent that such foreclosure is not otherwise prohibited by clauses (a) through (c) of this Section 3.01.

SECTION 3.02. No Interference. Supplier, for itself and on behalf of the other Second Priority Secured Parties, agrees that, whether or not any Insolvency or Liquidation Proceeding or Liquidation Sale has been commenced, the Second Priority Secured Parties:

(a) except for Second Priority Permitted Actions, will not, so long as the Discharge of First Priority Claims has not occurred, (A) enforce or exercise, or seek to enforce or exercise, any rights or remedies with respect to any Collateral (including the enforcement of any right under any account control agreement, landlord waiver or bailee's letter or any similar agreement or arrangement to which any Second Priority Secured Party is a party) or (B) commence or join with any Person (other than the First Priority Agent) in commencing, or petition for or vote in favor of any resolution for, any action or proceeding with respect to such rights or remedies (including any foreclosure action); *provided, however*, that none of the Second Priority Secured Parties may enforce or exercise any or all such rights and remedies, or commence, join with any Person in commencing, or petition for or vote in favor of any resolution for, any such action or proceeding, after a period of 90 days has elapsed (which period shall be tolled during any period in which the First Priority Agent shall not be entitled to enforce or exercise any rights or remedies with respect to any Collateral as a result of (x) any injunction issued by a court of competent jurisdiction or (y) the automatic stay or any other stay in any Insolvency or Liquidation Proceeding) since the date on which Supplier has delivered to the First Priority Agent written notice of an uncured default under the Prime Vendor Agreement (the "**Standstill Period**"); *provided further, however*, that (1) notwithstanding the expiration of the Standstill Period or anything herein to the contrary, in no event shall Supplier or any other Second Priority Secured Party enforce or exercise any rights or remedies with respect to any Collateral, or commence, join with any Person at any time in commencing, or petition for or vote in favor of any resolution for, any such action or proceeding, if the First Priority Agent or any other First Priority Secured Party shall have commenced, and shall be diligently pursuing (or shall have sought or requested relief from or modification of the automatic stay or any other stay in any Insolvency or Liquidation Proceeding to enable the commencement and pursuit thereof), the enforcement or exercise of any rights or remedies with respect to any Collateral or any such action or proceeding (prompt written notice thereof to be given to the Second Priority Agent by the First Priority Agent) and (2) after the expiration of the Standstill Period, so long as neither the First Priority Agent nor the First Priority Secured Parties have commenced any action to enforce their Lien on any material portion of the Collateral, in the event that and for so long as the Second Priority Secured Parties (or Supplier on their behalf) have commenced any actions to enforce their Lien with respect to any Collateral to the extent permitted hereunder and are diligently pursuing such actions, neither the First Priority Secured Parties nor the First Priority Agent shall take any action of a similar nature with respect to such Collateral; *provided*, that all other provisions of this Agreement (including the turnover provisions of Article IV) are complied with;

(b) will not contest, protest or object to any foreclosure action or proceeding brought by the First Priority Agent or any other First Priority Secured Party, or any other

enforcement or exercise by any First Priority Secured Party of any rights or remedies relating to the Collateral under the First Priority Debt Documents or an Insolvency or Liquidation Proceeding or in connection with a Liquidation Sale or otherwise, so long as Second Priority Liens attach to the proceeds thereof subject to the relative priorities set forth in Section 2.01(a), and will not contest, protest or object to the forbearance by the First Priority Agent or any other First Priority Secured Party from commencing or pursuing any foreclosure action or proceeding or any other enforcement or exercise of any rights or remedies with respect to the Collateral.

In furtherance of the foregoing, Supplier, for itself and on behalf of the other Second Priority Secured Parties, agrees that, whether or not any Insolvency or Liquidation Proceeding or Liquidation Sale has been commenced, the Second Priority Secured Parties will not, except for Second Priority Permitted Actions, (w) take or receive any Collateral, or any proceeds thereof or payment with respect thereto, in connection with the exercise of any right or enforcement of any remedy with respect to any Collateral or in connection with any insurance policy award under a policy of insurance relating to any Collateral or any condemnation award (or deed in lieu of condemnation) relating to any Collateral, (x) take any action that would, or could reasonably be expected to, hinder, in any manner, any exercise of remedies under the First Priority Debt Documents, including any Disposition of any Collateral, whether by foreclosure or otherwise and (y) object to the manner in which the First Priority Agent or any other First Priority Secured Party may seek to enforce or collect the First Priority Claims or the First Priority Liens, regardless of whether any action or failure to act by or on behalf of the First Priority Agent or any other First Priority Secured Party is, or could be, adverse to the interests of the Second Priority Secured Parties, and will not assert, and hereby waive, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or claim the benefit of any marshalling, appraisal, valuation or other similar right that may be available under applicable law with respect to the Collateral or any similar rights a junior secured creditor may have under applicable law, and (z) will not attempt, directly or indirectly, whether by judicial proceeding or otherwise, to challenge or question the validity or enforceability of any First Priority Claim or any First Priority Security Document, including this Agreement, or the validity or enforceability of the priorities, rights or obligations established by this Agreement.

SECTION 3.03. Rights as Unsecured Creditors. The Second Priority Secured Parties may, in accordance with the terms of the Second Priority Financing Documents and applicable law, enforce rights and exercise remedies against any Grantor as unsecured creditors; *provided*, that no such action is otherwise inconsistent with the terms of this Agreement. Without limiting the generality of the foregoing sentence, the Second Priority Secured Parties shall be entitled to prosecute litigation against any Grantor or any other Person liable in respect of the Second Priority Claims but shall be prohibited from taking any action to enforce any judgment relating to, or applicable to, any of the Second Priority Collateral until the Discharge of the First Priority Claims. Nothing in this Agreement shall prohibit the receipt by any Second Priority Secured Party of the required payments of any amounts due under the Second Priority Financing Documents so long as such receipt is not the direct or indirect result of the enforcement of Second Priority Liens or exercise in contravention of this Agreement by any Second Priority Secured Party of rights or remedies as a secured creditor against Collateral or enforcement in contravention of this Agreement of any Second Priority Lien against Collateral (including any judgment lien resulting from the exercise of remedies available to an unsecured creditor to the extent relating to, or applicable to, any of the Second Priority Collateral).

SECTION 3.04. Automatic Release of Second Priority Liens. If, in connection with (i) any Disposition of any Collateral permitted under the terms of the First

Priority Debt Documents or (ii) the enforcement or exercise of any rights or remedies with respect to the Collateral, including any Disposition of Collateral, the First Priority Agent, for itself and on behalf of the other First Priority Secured Parties, (x) releases any of the First Priority Liens, or (y) releases any Guarantor from its obligations under its guarantee of the First Priority Claims (in each case, a "Release"), other than any such Release granted following (and not as a condition to) the Discharge of First Priority Claims, then the Second Priority Liens on such Collateral (to the extent, and only to the extent, subject to the Release pursuant to preceding clause (x)), and the obligations of such Guarantor under its guarantee of the Second Priority Claims (to the extent, and only to the extent, to the Release of the applicable Guarantor pursuant to preceding clause (y)), shall be automatically, unconditionally and simultaneously released (subject to the receipt by the First Priority Agent of any applicable cash proceeds of any such Disposition or sums realized in enforcement or exercise of any rights or remedies with respect to the Second Priority Collateral and the application thereof in accordance with the terms of this Agreement), and Supplier shall, for itself and on behalf of the other Second Priority Secured Parties, promptly execute and deliver to the First Priority Agent, the relevant Grantor or such Guarantor such termination statements, releases and other documents as the First Priority Agent or the relevant Grantor or Guarantor may reasonably request and provide to effectively confirm such Release. For the avoidance of doubt, all proceeds of any Disposition of Collateral or other enforcement or exercise of any rights or remedies with respect to the Collateral received by any Secured Party shall be subject to the application of proceeds requirements of Section 4.01 and, until application in accordance therewith, each Secured Party agrees, subject to applicable law, to hold the same in express trust for such Secured Party (or Secured Parties) as are entitled thereto in accordance with the terms hereof. Until the Discharge of First Priority Claims occurs, any Supplier, for itself and on behalf of any other Second Priority Secured Party, hereby appoints the First Priority Agent, and any officer or agent of the First Priority Agent, with full power of substitution, as the attorney-in-fact of each Second Priority Secured Party for the purpose of carrying out the provisions of this Section 3.04 and taking any action and executing any instrument that the First Priority Agent may deem necessary or advisable to accomplish the purposes of this Section 3.04 (including any endorsements or other instruments of transfer or release), which appointment is irrevocable and coupled with an interest.

SECTION 3.05. Insurance and Condemnation Awards. So long as the Discharge of First Priority Claims has not occurred, the First Priority Agent and the other First Priority Secured Parties shall have the exclusive right, subject to the rights of the Grantors under the First Priority Debt Documents, to settle and adjust claims in respect of Collateral under policies of insurance covering Collateral and to approve any award granted in any condemnation or similar proceeding, or any deed in lieu of condemnation, in respect of the Collateral, provided that all the other provisions of this Agreement are complied with in regard thereto. All proceeds of any such policy and any such award, or any payments with respect to a deed in lieu of condemnation, shall (a) first, prior to the Discharge of First Priority Claims and subject to the rights of the Grantors under the First Priority Debt Documents, be paid to the First Priority Agent for the benefit of First Priority Secured Parties pursuant to the terms of the First Priority Debt Documents, (b) second, after the Discharge of First Priority Claims and subject to the rights of the Grantors under the Second Priority Financing Documents, be paid to the Second Priority Secured Parties pursuant to the terms of the Second Priority Financing Documents, and (c) third, be paid to the owner of the subject property or as a court of competent jurisdiction may otherwise direct. Until the Discharge of First Priority Claims has occurred, if any Second Priority Secured Party shall, at any time, receive any proceeds of any such insurance policy or any such award or payment, it shall transfer and pay over such proceeds to the First Priority Agent in accordance with Section 4.02.

SECTION 3.06. Notification of Release of Collateral. Each of the First Priority Agent and Supplier shall give the other prompt written notice of the Disposition by it of, and Release by it of the Lien on, any Collateral. Such notice shall describe in reasonable detail the subject Collateral, the parties involved in such Disposition or Release, the place, time manner and method thereof, and the consideration, if any, received therefor; *provided, however*, that the failure to give any such notice shall not in and of itself in any way impair the effectiveness of any such Disposition or Release.

ARTICLE IV

Payments

SECTION 4.01. Application of Proceeds. Any Collateral or proceeds thereof received by any Secured Party in connection with any Disposition of, or collection on, such Collateral upon the enforcement or exercise of any right or remedy shall be applied as follows:

first, to the payment in full of the First Priority Claims and the costs and reasonable out-of-pocket expenses of the First Priority Agent in connection with such enforcement or exercise, and

second, after all such costs and expenses have been paid in full and the Discharge of First Priority Claims has occurred, to the payment of the Second Priority Claims.

After all such costs and expenses have been paid in full, the Discharge of First Priority Claims has occurred and the Discharge of Second Priority Claims has occurred, any surplus Collateral or proceeds then remaining shall be returned to the applicable Grantor or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

SECTION 4.02. Payment Over. So long as the Discharge of First Priority Claims has not occurred, any Collateral or any proceeds thereof (together with assets or proceeds subject to Liens referred to in the final sentence of Section 2.03) received by any Second Priority Secured Party in connection with any Disposition of, or collection on, such Collateral upon the enforcement or the exercise of any right or remedy with respect to the Collateral, or in connection with any insurance policy claim or any condemnation award (or deed in lieu of condemnation), shall be segregated and held in trust and forthwith transferred or paid over to the First Priority Agent for the benefit of the First Priority Secured Parties in the same form as received, together with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. Until the Discharge of First Priority Claims occurs, Supplier, for itself and on behalf of each other Second Priority Secured Party, hereby appoints the First Priority Agent, and any officer or agent of the First Priority Agent, with full power of substitution, the attorney-in-fact of each Second Priority Secured Party for the purpose of carrying out the provisions of this Section 4.02 and taking any action and executing any instrument that the First Priority Agent may deem necessary or advisable to accomplish the purposes of this Section 4.02, which appointment is irrevocable and coupled with an interest. Nothing herein contained shall be deemed to prohibit any Second Priority Secured Party from receiving and retaining the purchase price paid to such Second Priority Secured Party in the ordinary course of business for goods sold to any Grantor in the ordinary course of business.

ARTICLE V

Insolvency or Liquidation Proceedings

SECTION 5.01. Bankruptcy Finance and Section 363 Matters. (a) In furtherance of this Agreement, until the Discharge of First Priority Claims has occurred, the Supplier, on behalf of itself and each of the Second Priority Secured Parties, agrees that, in the event of any Insolvency or Liquidation Proceeding, the Second Priority Secured Parties: (i) will not oppose or object to the use of any Collateral constituting cash collateral under Section 363 of the Bankruptcy Code, or any comparable provision of any other Bankruptcy Law, unless the First Priority Secured Parties, or a representative authorized by the First Priority Secured Parties, shall oppose or object to such use of cash collateral; (ii) (A) will not oppose or object to any post-petition financing provided to any Grantor, whether provided by the First Priority Secured Parties or any other Person, under Section 364 of the Bankruptcy Code, or any comparable provision of any other Bankruptcy Law (a "**DIP Financing**"), or the Liens securing any DIP Financing ("**DIP Financing Liens**"), unless the First Priority Secured Parties, or a representative authorized by the First Priority Secured Parties, shall then oppose or object to such DIP Financing or such DIP Financing Liens, (B) to the extent that (x) such DIP Financing Liens are senior to, or rank *pari passu* with, the First Priority Liens on the Collateral, and/or (y) the First Priority Claims are included as obligations under such DIP Financing or are repaid with proceeds of the DIP Financing, the Second Priority Secured Parties will subordinate the Second Priority Liens on the Collateral to the First Priority Liens on the Collateral, if applicable, and the DIP Financing Liens (including if the First Priority Claims are (x) included as obligations under such DIP Financing and/or (y) are repaid with proceeds of the DIP Financing) on the terms of this Agreement; and (C) will not propose or support any DIP Financing to any Grantor; (iii) will not propose, vote in favor of, or otherwise support any plan of reorganization that is inconsistent with the priorities or other provisions of this Agreement; (iv) except to the extent permitted by paragraph (b) of this Section 5.01, in connection with the use of cash collateral as described in clause (i) above or a DIP Financing, will not request adequate protection with respect to any Collateral or any other relief in connection with such use of cash collateral, DIP Financing or DIP Financing Liens; and (v) will not oppose or object to any Disposition of any Collateral free and clear of the Second Priority Liens or other claims under Section 363 of the Bankruptcy Code, or any comparable provision of any other Bankruptcy Law, if the First Priority Secured Parties, or a representative authorized by the First Priority Secured Parties, shall consent to such Disposition.

(b) The Second Priority Secured Parties agree that they shall not, and shall not support any other Person in contesting, (i) any request by the First Priority Agent or any other First Priority Secured Party for adequate protection in respect of any First Priority Claims or (ii) any objection, based on a claim of a lack of adequate protection with respect of any First Priority Claims, by the First Priority Agent or any other First Priority Secured Party to any motion, relief, action or proceeding.

SECTION 5.02. Additional Bankruptcy Matters. The Second Priority Secured Parties agree that, so long as the Discharge of First Priority Claims has not occurred, no Second Priority Secured Party shall, without the prior written consent of the First Priority Agent, seek or request relief from or modification of the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of any part of the Collateral, any proceeds thereof or any Second Priority Lien on the Collateral. If, in any Insolvency or Liquidation Proceeding, debt obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed, pursuant to a plan of reorganization or similar dispositive

restructuring plan, on account of the First Priority Claims and the Second Priority Claims, then, to the extent the debt obligations distributed on account of the First Priority Claims and on account of the Second Priority Claims are secured by Liens upon the same assets or property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations. In addition, Supplier, for itself and on behalf of the other Second Priority Secured Parties, (x) agrees that no Second Priority Secured Party shall oppose or seek to challenge any claim by the First Priority Agent or any other First Priority Secured Party for allowance in any Insolvency or Liquidation Proceeding of First Priority Claims consisting of post-petition interest, fees or expenses to the extent of the value of the First Priority Liens (it being understood and agreed that such value shall be determined without regard to the existence of the Second Priority Liens on the Collateral), (y) waives any claim any Second Priority Secured Party may hereafter have against any First Priority Secured Party arising out of (a) the election by any First Priority Secured Party of the application of Section 1111(b)(2) of the Bankruptcy Code, or any comparable provision of any other Bankruptcy Law, or (b) any use of cash collateral or financing arrangement, or any grant of a security interest in the Collateral, in any Insolvency or Liquidation Proceeding and (z) agrees that, without the written consent of First Priority Agent, it will not seek to vote with the First Priority Agent (or any other First Priority Secured Party) as a single class in connection with any plan of reorganization in any Insolvency or Liquidation Proceeding. In addition, other than with respect to the Second Priority Permitted Actions, nothing contained herein shall prohibit or in any way limit the First Priority Agent or any other First Priority Secured Party from opposing, challenging or objecting to, in any Insolvency or Liquidation Proceeding or otherwise, any action taken, or any claim made, by any Second Priority Secured Party with respect to the Collateral, including any request by any Second Priority Secured Party for adequate protection or any exercise by any Second Priority Secured Party of any of its rights and remedies under the Second Priority Financing Documents with respect to the Collateral or otherwise with respect to the Collateral.

ARTICLE VI

Other Agreements

SECTION 6.01. Effect of Refinancing of Indebtedness under First Priority Debt Documents. If, substantially contemporaneously with the Discharge of First Priority Claims, the Grantors Refinance Indebtedness outstanding under the First Priority Debt Documents and provided that the Company or the First Priority Agent gives to Supplier or any of the other Second Priority Secured Parties written notice (the "**Refinancing Notice**") electing the application of the provisions of this Section 6.01 to such Refinancing Indebtedness, then (i) such Discharge of First Priority Claims shall automatically be deemed not to have occurred for all purposes of this Agreement, (ii) such Refinancing Indebtedness and all other obligations under the documents evidencing such Indebtedness (*provided* that the aggregate principal committed amount thereof shall not exceed \$150,000,000) (the "**New First Priority Claims**") shall automatically be treated as First Priority Claims for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, (iii) the Debt Agreement and the other documents evidencing such Refinancing Indebtedness (the "**New First Priority Debt Documents**") shall automatically be treated as the First Priority Debt Agreement and the First Priority Debt Documents and, in the case of New First Priority Debt Documents that are security documents pursuant to which any Grantor has granted a Lien to secure any New First Priority Claim, as the First Priority Security Documents for all purposes of this Agreement, (iv) the collateral agent under the New First Priority Debt Documents (the "**New First Priority Agent**") shall be deemed to be the First Priority Agent for all purposes of this Agreement and (v)

the lenders and other creditors under the New First Priority Debt Documents shall be deemed to be the First Priority Creditors for all purposes of this Agreement. Upon receipt of a Refinancing Notice, which notice shall include the identity of the New First Priority Agent, the Second Priority Secured Parties shall promptly enter into such documents and agreements (including amendments or supplements to this Agreement) as the Company or such New First Priority Agent may reasonably request in order to provide to the New First Priority Agent the rights and powers contemplated hereby, in each case consistent in all material respects with the terms of this Agreement. The Company shall cause the agreement, document or instrument pursuant to which the New First Priority Agent is appointed to provide that the New First Priority Agent agrees to be bound by the terms of this Agreement.

SECTION 6.02. Reinstatement. If, in any Insolvency or Liquidation Proceeding or otherwise, all or part of any payment with respect to the First Priority Claims previously made shall be rescinded for any reason whatsoever, then the First Priority Claims shall be reinstated to the extent of the amount so rescinded and, if theretofore terminated, this Agreement shall be reinstated in full force and effect and such prior termination shall not diminish, release, discharge, impair or otherwise affect the Lien priorities and the relative rights and obligations of the First Priority Secured Parties and the Second Priority Secured Parties provided for herein.

SECTION 6.03. Authorization of First Priority Collateral Agent and Supplier. By accepting the benefits of this Agreement and the other First Priority Security Documents, each First Priority Secured Party hereby authorizes the First Priority Agent to enter into this Agreement and to act on its behalf as collateral agent hereunder and in connection herewith. By accepting the benefits of this Agreement and the other Second Priority Financing Documents, each Second Priority Secured Party authorizes Supplier to enter into this agreement and to act on its behalf as agent hereunder and in connection therewith.

SECTION 6.04. Bailment for Perfection of Certain Security Interests. The First Priority Agent agrees that if it shall at any time hold a First Priority Lien on any Collateral that can be perfected or the priority of which can be enhanced by the possession or control of such Collateral or of any account in which such Collateral is held, and if such Collateral or any such account is in fact in the possession or under the control of the First Priority Agent, or of agents or bailees of the First Priority Agent (such Collateral being referred to herein as the "**Pledged or Controlled Collateral**"), the First Priority Agent shall, solely for the purpose of perfecting the Second Priority Liens granted under the Second Priority Financing Documents and subject to the terms and conditions of this Section 6.04, also (i) hold and/or maintain control of such Pledged or Controlled Collateral as gratuitous bailee for and representative (as defined in Section 1-201(35) of the Uniform Commercial Code as in effect in the State of New York) of, or as agent for, the Second Priority Secured Parties, (ii) with respect to any securities accounts included in the Collateral, have "control" (within the meaning of Section 8-106(d)(3) of the UCC) of such securities accounts on behalf of the Second Priority Secured Parties and (iii) with respect to any deposit accounts included in the Collateral, act as agent for the Second Priority Secured Parties and any assignee. So long as the Discharge of First Priority Claims has not occurred, the First Priority Agent shall be entitled to deal with the Pledged or Controlled Collateral in accordance with the terms of this Agreement and the other First Priority Debt Documents as if the Second Priority Liens did not exist. The obligations and responsibilities of the First Priority Agent to the Second Priority Secured Parties under this Section 6.04 shall be limited solely to holding or controlling the Pledged or Controlled Collateral as gratuitous bailee and representative (as defined in Section 1-201(35) of the Uniform Commercial Code as in effect in the State of New York) in accordance with this Section 6.04. Without limiting the foregoing, the First

Priority Agent shall have no obligation or responsibility to ensure that any Pledged or Controlled Collateral is genuine or owned by any of the Grantors. The First Priority Agent acting pursuant to this Section 6.04 shall not, by reason of this Agreement, any other Security Document or any other document, have a fiduciary relationship in respect of any other First Priority Secured Party or any Second Priority Secured Party. Upon the Discharge of First Priority Claims, the First Priority Agent shall transfer the possession and control of the Pledged or Controlled Collateral, together with any necessary endorsements but without recourse or warranty, (i) if the Second Priority Claims are outstanding at such time, to the Second Priority Secured Parties, if no Second Priority Claims are outstanding at such time, to the applicable Grantor, in each case so as to allow such Person to obtain possession and control of such Pledged or Controlled Collateral. In connection with any transfer under clause (i) of the immediately preceding sentence, the First Priority Agent agrees, at the expense of the Grantors, to take all actions in its power as shall be reasonably requested by the Second Priority Secured Parties to obtain a first priority security interest in the Pledged or Controlled Collateral.

SECTION 6.05. Further Assurances. Each of the First Priority Agent, for itself and on behalf of the other First Priority Secured Parties and the Second Priority Secured Parties, and each Grantor party hereto, for itself and on behalf of its subsidiaries, agrees that it will execute, or will cause to be executed, any and all further documents, agreements and instruments, and take all such further actions, as may be required under any applicable law, or which the First Priority Agent or the Second Priority Secured Parties may reasonably request, to effectuate the terms of this Agreement, including the relative Lien priorities provided for herein.

ARTICLE VII

Representations and Warranties

SECTION 7.01. Representations and Warranties of Each Party. Each party hereto represents and warrants to the other parties hereto as follows:

(a) such party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite power and authority to execute and deliver this Agreement and perform its obligations hereunder.

(b) this Agreement has been duly executed and delivered by such party and constitutes a legal, valid and binding obligation of such party, enforceable in accordance with its terms.

(c) the execution, delivery and performance by such party of this Agreement (i) do not require any consent or approval of, registration or filing with or any other action by any governmental authority (except as contemplated hereby) and (ii) will not violate any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents or by-laws of such party or any order of any governmental authority or any provision of any indenture, agreement or other instrument applicable to or binding upon such party.

SECTION 7.02. Representations and Warranties of Each of the First Priority Agent and Supplier. Each of the First Priority Agent and Supplier represents and warrants to the other parties hereto that it has been duly authorized in writing by the First Priority Secured Parties or Second Priority Secured Parties, as the case may be, to enter into this Agreement.

ARTICLE VIII

No Reliance; No Liability; Obligations Absolute

SECTION 8.01. No Reliance; Information. The First Priority Secured Parties and the Second Priority Secured Parties shall have no duty to disclose to any Second Priority Secured Party or to any First Priority Secured Party, respectively, any information relating to the Company or any of the Grantors, or any other circumstance bearing upon the risk of nonpayment of any of the First Priority Claims or the Second Priority Claims, as the case may be, that is known or becomes known to any of them or any of their Affiliates. In the event any First Priority Secured Party or any Second Priority Secured Party, in its sole discretion, undertakes at any time or from time to time to provide any such information to, respectively, any Second Priority Secured Party or any First Priority Secured Party, it shall be under no obligation (i) to make, and shall not make or be deemed to have made, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of the information so provided, (ii) to provide any additional information or to provide any such information on any subsequent occasion or (iii) to undertake any investigation.

SECTION 8.02. No Warranties or Liability. (a) The First Priority Agent, for itself and on behalf of the other First Priority Secured Parties, acknowledges and agrees that, except for the representations and warranties set forth in Article VII, no Second Priority Secured Party has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Second Priority Financing Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. Supplier, for itself and on behalf of the other Second Priority Secured Parties, acknowledges and agrees that, except for the representations and warranties set forth in Article VII, neither the First Priority Agent nor any other First Priority Secured Party has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the First Priority Debt Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon.

(b) The Second Priority Secured Parties shall have no express or implied duty to the First Priority Agent or any other First Priority Secured Party, and the First Priority Agent and the other First Priority Secured Parties shall have no express or implied duty to the Second Priority Secured Parties to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of a default or an event of default under any First Priority Debt Document and any Second Priority Financing Document (other than, in each case, this Agreement), regardless of any knowledge thereof which they may have or be charged with.

(c) Supplier, for itself and on behalf of the other Second Priority Secured Parties, agrees that no First Priority Secured Party shall have any liability to the Second Priority Secured Parties and hereby waive any claim against any First Priority Secured Party, arising out of any and all actions which the First Priority Agent or the other First Priority Secured Parties may take or permit or omit to take with respect to (i) the First Priority Debt Documents (other than this Agreement), (ii) the collection of the First Priority Claims or (iii) the maintenance of, the preservation of, the foreclosure upon or the Disposition of any Collateral.

ARTICLE IX
Miscellaneous

SECTION 9.01. Notices. Notices and other communications provided for herein shall be in writing in the English language (or accompanied by a certified translation) and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax, as follows:

if to the First Priority Agent:

Healthcare Finance Group, LLC
199 Water Street, 31st Floor
New York, New York 10038
Attention: General Counsel — Chief Credit Officer and National Portfolio Manager
Facsimile No.: (212) 785-8501

with a copy to:

Kaye Scholer LLP
425 Park Avenue
New York, New York 10022
Attention: Terry D. Novetsky, Esq.
Facsimile No.: (212) 836-6490

if to Supplier or any of the Second Priority Secured Parties;

[]

[]

[]

Attention: []

Facsimile No.: []

with a copy to:

[]

[]

[]

Attention: []

Facsimile No.: []

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 fax or on the date five Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 9.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 9.01. As agreed to between the Company and any Collateral Agent from time to time, notices and other communications may also be delivered by e-mail to the e-mail address of a representative of the applicable Person provided from time to time by such Person. In addition, Supplier agrees to use diligent efforts to provide

any notices of default or acceleration or similar notices which they give to any Grantor under any Second Priority Financing Documents.

SECTION 9.02. Conflicts. IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY BETWEEN THE PROVISIONS OF THIS AGREEMENT AND THE PROVISIONS OF THE OTHER DEBT DOCUMENTS, THE PROVISIONS OF THIS AGREEMENT SHALL CONTROL.

SECTION 9.03. Effectiveness; Survival; Termination. This Agreement shall become effective when executed and delivered by the parties hereto. All covenants, agreements, representations and warranties made by any party in this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency or Liquidation Proceeding. Supplier, for itself and on behalf of the other Second Priority Secured Parties, hereby waive any and all rights the Second Priority Secured Parties may now or hereafter have under applicable law to revoke this Agreement or any of the provisions of this Agreement. This Agreement shall terminate and be of no further force and effect, (i) subject to compliance with its obligations to take certain actions upon Discharge of the Second Priority Claims pursuant to Article V and Section 3.01(c), with respect to the Second Priority Secured Parties and the Second Priority Claims, upon the later of (1) the date upon which the obligations under the Second Priority Financing Documents terminate if there are no other Second Priority Claims outstanding on such date and (2) if there are other Second Priority Claims outstanding on such date, the date upon which such Second Priority Claims terminate, subject to the rights of the Second Priority Claims and Supplier under Section 6.01 and (ii) subject to Section 6.01 and compliance with its obligations to take certain actions upon Discharge of the First Priority Claims pursuant to Article V, with respect to the First Priority Agent, the First Priority Secured Parties and the First Priority Claims, the date of Discharge of First Priority Claims, subject to the rights of the First Priority Secured Parties under Section 6.01. In addition, for the avoidance of doubt, the Lien priorities provided for herein and the respective rights, interests, agreements and obligations hereunder of the First Priority Agent and the other First Priority Secured Parties and the Second Priority Secured Parties shall remain in full force and effect irrespective of: (a) any change in the time, place or manner of payment of, or in any other term of, all or any portion of the First Priority Claims, it being specifically acknowledged that a portion of the First Priority Claims consists or may consist of Indebtedness that is revolving in nature, and the amount thereof that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed (*provided* that the aggregate principal committed amount thereof shall not exceed \$150,000,000); (b) any change in the time, place or manner of payment of, or any other term of, all or any portion of the First Priority Claims; (c) any amendment, waiver or other modification, whether by course of conduct or otherwise, of any Debt Document (*provided* that the aggregate principal committed amount thereof shall not exceed \$150,000,000); (d) the securing of any First Priority Claims or Second Priority Claims with any additional collateral or guarantees, or any exchange, release, voiding, avoidance or non-perfection of any security interest in any Collateral or any other collateral or any release of any guarantee securing any First Priority Claims or Second Priority Claims; (e) the commencement of any Insolvency or Liquidation Proceeding or Liquidation Sale in respect of the Company or any other Grantor; or (f) any other circumstances that otherwise might constitute a defense available to, or a discharge of, the Company or any other Grantor in respect of the First Priority Claims or this Agreement, or any of the Second Priority Secured Parties in respect of this Agreement.

SECTION 9.04. Severability. In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 9.05. Amendments; Waivers. (a) No failure or delay on the part of any party hereto in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties hereto are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 9.05, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the First Priority Agent and Supplier.

SECTION 9.06. Postponement of Subrogation. The Second Priority Secured Parties agrees that no payment or distribution to any First Priority Secured Party pursuant to the provisions of this Agreement shall entitle any Second Priority Secured Party to exercise any rights of subrogation in respect thereof until the Discharge of First Priority Claims shall have occurred. Following the Discharge of First Priority Claims, each First Priority Secured Party agrees to execute such documents, agreements, and instruments as any Second Priority Secured Party may reasonably request to evidence the transfer by subrogation to any such Person of an interest in the First Priority Claims resulting from payments or distributions to such First Priority Secured Party by such Person, so long as all costs and expenses (including all reasonable legal fees and disbursements) incurred in connection therewith by such First Priority Secured Party are paid by such Person upon request for payment thereof.

SECTION 9.07. Applicable Law; Jurisdiction; Consent to Service of Process. (a) THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

(b) Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of any Supreme Court for New York County, New York or in The United States District Court for the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, 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 only in such New York court or, to the extent permitted by law, in such Federal court. Each party hereto agrees that a final judgment in any such action

or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) Each party hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any New York court or in any such Federal court. Each party hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.08. Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. 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 9.08.

SECTION 9.09. Parties in Interest. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, as well as the other First Priority Secured Parties and Second Priority Secured Parties, all of whom are intended to be bound by, and to be third party beneficiaries of, this Agreement. No other Person shall have or be entitled to assert rights or benefits hereunder.

SECTION 9.10. Specific Performance. Each of the First Priority Agent and Supplier may demand specific performance of this Agreement and, on behalf of itself and the respective other Secured Parties, hereby irrevocably waives any defense based on the adequacy of a remedy at law and any other defense that might be asserted to bar the remedy of specific performance in any action which may be brought by the respective Secured Parties.

SECTION 9.11. Headings. Article and Section headings used herein and the Table of Contents hereto are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 9.12. Counterparts. 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, and shall become effective as provided in Section 9.03. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

SECTION 9.13. Provisions Solely to Define Relative Rights. The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of the First Priority Secured Parties, on the one hand, and the Second Priority Secured Parties, on the other hand. None of the Company, any other Grantor, any Guarantor or any other creditor thereof shall have any rights or obligations, except as expressly provided in this Agreement hereunder and none of the Company, any other Grantor or any Guarantor may rely on the terms hereof. Nothing in this Agreement is intended to or shall impair the obligations of the Company or any other Grantor or any Guarantor, which are absolute and unconditional, to pay the First Priority Claims and the Second Priority Claims as and when the same shall become due and payable in accordance with their terms.

[Remainder of this page intentionally left blank]

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

HEALTHCARE FINANCE GROUP, LLC, as First
Priority Agent

By: _____
Name:
Title:

[INSERT NAME OF SUPPLIER], for itself and on
behalf of the Second Priority Secured Parties

By: _____
Name:
Title:

ACKNOWLEDGMENT

The Company and each of the Company's undersigned Subsidiaries each hereby acknowledge that they have received a copy of the foregoing Agreement and consent thereto, agree to recognize all rights granted thereby to the First Priority Agent and the Second Priority Secured Parties and to Supplier and the Second Priority Secured Parties, and will not do any act or perform any obligation which is not in accordance with the agreements set forth therein. The Company and each of the Company's undersigned Subsidiaries each further acknowledge and agree that they are not an intended beneficiary or third party beneficiary under the foregoing Agreement.

ACKNOWLEDGED AS OF THE DATE FIRST WRITTEN ABOVE:¹

BIOSCRIP, INC.

By: _____
Name:
Title:

BIOSCRIP INFUSION SERVICES, INC.

By: _____
Name:
Title:

CHRONIMED, LLC

By: _____
Name:
Title:

BIOSCRIP PHARMACY, INC.

By: _____
Name:
Title:

¹ Signatories to be updated as necessary.

BRADHURST SPECIALTY PHARMACY, INC.

By: _____
Name:
Title:

BIOSCRIP PHARMACY (NY), INC.

By: _____
Name:
Title:

BIOSCRIP PBM SERVICES, LLC

By: _____
Name:
Title:

NATURAL LIVING INC.

By: _____
Name:
Title:

BIOSCRIP INFUSION SERVICES, LLC

By: _____
Name:
Title:

BIOSCRIP NURSING SERVICES, LLC

By: _____
Name:
Title:



BIOSCRIP INFUSION MANAGEMENT, LLC

By: _____
Name:
Title:

BIOSCRIP PHARMACY SERVICES, INC.

By: _____
Name:
Title:

CRITICAL HOMECARE SOLUTIONS, INC.

By: _____
Name:
Title:

APPLIED HEALTH CARE, LLC

By: _____
Name:
Title:

CEDAR CREEK HOME HEALTH CARE AGENCY, INC.

By: _____
Name:
Title:

DEACONESS ENTERPRISES, LLC

By: _____
Name:
Title:



DEACONESS HOMECARE, LLC

By: _____
Name:
Title:

EAST GOSHEN PHARMACY, INC.

By: _____
Name:
Title:

ELK VALLEY HEALTH SERVICES, INC.

By: _____
Name:
Title:

ELK VALLEY HOME HEALTH CARE AGENCY, INC.

By: _____
Name:
Title:

ELK VALLEY PROFESSIONAL AFFILIATES, INC.

By: _____
Name:
Title:

GERICARE, INC.

By: _____
Name:
Title:

INFUSION PARTNERS, LLC

By: _____
Name:
Title:



INFUSION PARTNERS OF BRUNSWICK, LLC

By: _____
Name:
Title:

INFUSION PARTNERS OF MELBOURNE, LLC

By: _____
Name:
Title:

INFUSION SOLUTIONS, INC.

By: _____
Name:
Title:

KNOXVILLE HOME THERAPIES, LLC

By: _____
Name:
Title:

NATIONAL HEALTH INFUSION, INC.

By: _____
Name:
Title:

NEW ENGLAND HOME THERAPIES, INC.

By: _____
Name:
Title:



OPTION HEALTH, LTD.

By: _____
Name:
Title:

PROFESSIONAL HOMECARE SERVICES, INC.

By: _____
Name:
Title:

REGIONAL AMBULATORY DIAGNOSTICS, INC.

By: _____
Name:
Title:

SCOTT-WILSON, INC.

By: _____
Name:
Title:

SOUTH MISSISSIPPI HOME HEALTH, INC.

By: _____
Name:
Title:

SOUTH MISSISSIPPI HOME HEALTH, INC. — REGION I

By: _____
Name:
Title:



SOUTH MISSISSIPPI HOME HEALTH, INC. — REGION II

By: _____
Name:
Title:

SOUTH MISSISSIPPI HOME HEALTH, INC. — REGION III

By: _____
Name:
Title:

SPECIALTY PHARMA, INC.

By: _____
Name:
Title:

WILCOX MEDICAL, INC.

By: _____
Name:
Title:

[UPDATE LIST OF SUBSIDIARY GUARANTORS]

[Form of]
AMENDED AND RESTATED COLLATERAL MANAGEMENT AGREEMENT

N-1

AMENDED AND RESTATED SECURITY AGREEMENT

By

**BIOSCRIP, INC.,
as Borrower**

and

THE GUARANTORS PARTY HERETO

and

**HEALTHCARE FINANCE GROUP, LLC,
as Collateral Agent**

Dated as of March 25, 2010

as

Amended and Restated

as of December 28, 2010

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AMENDED AND RESTATED SECURITY AGREEMENT

This AMENDED AND RESTATED SECURITY AGREEMENT, dated as of March 25, 2010 and as AMENDED AND RESTATED as of December 28, 2010 (as so Amended and Restated, and as it may be further amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the provisions hereof, this "Agreement"), made by BioScrip, Inc., a Delaware corporation ("Borrower") and the guarantors from time to time party hereto by execution of this Agreement or otherwise by execution of a Joinder Agreement (collectively, the "Guarantors"), as pledgors, assignors and debtors (Borrower, together with the Guarantors, in such capacities and together with any successors in such capacities, collectively, the "Pledgors," and each, a "Pledgor"), in favor of Healthcare Finance Group, LLC ("HFG") as successor to Jefferies Finance LLC ("Jefferies"), in its capacity as collateral agent pursuant to the Credit Agreement (as hereinafter defined), as pledgee, assignee and secured party (in such capacities and together with any successors in such capacities, the "Collateral Agent").

R E C I T A L S:

- A. Borrower, the Guarantors, the Collateral Agent, the lending institutions (the "Lenders") and other entities party thereto are parties to that certain credit agreement, dated as of March 25, 2010, as such credit agreement is being Amended and Restated in its entirety as of the date hereof pursuant to the terms of an amended and restated credit agreement (as so amended and restated and as further amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement").
 - B. The Guarantors have, pursuant to the Credit Agreement, unconditionally guaranteed the Secured Obligations.
 - C. Borrower, the Guarantors and the Collateral Agent entered into this Agreement (as in effect immediately prior to the Restatement Date, the "Existing Agreement") to , among other things, secure the payment and performance of the Secured Obligations.
 - D. Borrower and the Guarantors have received and will continue receive substantial direct and indirect benefits from the execution, delivery and performance of the Secured Obligations under the Credit Agreement and the other Loan Documents and are, therefore, willing to enter into this Agreement, which shall amend and restate the Original Security Agreement in its entirety in the manner set forth herein.
 - F. Each Pledgor is, or as to Pledged Collateral acquired by such Pledgor after the date hereof will be, the legal and/or beneficial owner of the Pledged Collateral pledged by it hereunder.
 - G. This Agreement is given by each Pledgor in favor of the Collateral Agent for the benefit of the Secured Parties to secure the payment and performance of all of the Secured Obligations.
 - H. It is a condition to the obligations of the Lenders to make the Loans under the Credit Agreement and a condition to the Issuing Bank issuing Letters of Credit under the Credit
-

Agreement that each Pledgor execute and deliver the applicable Loan Documents, including this Agreement.

A G R E E M E N T

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Pledgor and the Collateral Agent hereby agree to AMEND AND RESTATE the Original Security Agreement on the Restatement Date in its entirety as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1 Definitions.

- (a) Unless otherwise defined herein or in the Credit Agreement, capitalized terms used herein that are defined in the UCC shall have the meanings assigned to them in the UCC.
- (b) Capitalized terms used but not otherwise defined herein that are defined in the Credit Agreement shall have the meanings given to them in the Credit Agreement.
- (c) The following terms shall have the following meanings:

“Account Debtor” shall mean any person who may become obligated to any Pledgor under, with respect to, or on account of, an Account, Chattel Paper or any General Intangible (including a payment intangible).

“Accounts” shall mean all “accounts,” as such term is defined in the UCC, now owned or hereafter acquired by any Pledgor, including (i) all accounts receivable, including accounts receivable pursuant to Reimbursement Approvals, other receivables, book debts and other forms of obligations (other than forms of obligations evidenced by Chattel Paper or Instruments) (including any such obligations that may be characterized as an account or contract right under the UCC), (ii) all of each Pledgor’s rights in, to and under all purchase orders or receipts for goods or services, (iii) all of each Pledgor’s rights to any goods represented by any of the foregoing (including unpaid sellers’ rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods), (iv) all rights to payment due to any Pledgor for property sold, leased, licensed, assigned or otherwise disposed of, for a policy of insurance issued or to be issued, for a secondary obligation incurred or to be incurred, for energy provided or to be provided, for the use or hire of a vessel under a charter or other contract, arising out of the use of a credit card or charge card, or for services rendered or to be rendered by any Pledgor or in connection with any other transaction (whether or not yet earned by performance on the part of any Pledgor) and (v) all collateral security of any kind, now or hereafter in existence, given by any Account Debtor or other person with respect to any of the foregoing.

“Acquisition Document Rights” shall mean, with respect to each Pledgor, collectively, all of such Pledgor’s rights, title and interest in, to and under the Acquisition Documents, including (i) all rights and remedies relating to monetary damages, including indemnification rights and remedies, and claims for damages or other relief pursuant to or in respect of the Acquisition Documents, (ii) all rights and remedies relating to monetary damages, including indemnification rights and remedies, and claims for monetary damages under or in respect of the agreements, documents and instruments referred to in the Acquisition Documents or related thereto and (iii) all proceeds, collections, recoveries and rights of subrogation with respect to the foregoing.

“Additional Pledged Interests” shall mean, collectively, with respect to each Pledgor, (i) all options, warrants, rights, agreements, additional membership, partnership or other equity interests of whatever class of any issuer of Initial Pledged Interests or any interest in any such issuer, together with all rights, privileges, authority and powers of such Pledgor relating to such interests in each such issuer or under any Organizational Document of any such issuer, and the certificates, instruments and agreements representing such membership, partnership or other interests and any and all interest of such Pledgor in the entries on the books of any financial intermediary pertaining to such membership, partnership or other equity interests from time to time acquired by such Pledgor in any manner and (ii) all membership, partnership or other equity interests, as applicable, of each limited liability company, partnership or other entity (other than a corporation) hereafter acquired or formed by such Pledgor and all options, warrants, rights, agreements, additional membership, partnership or other equity interests of whatever class of such limited liability company, partnership or other entity, together with all rights, privileges, authority and powers of such Pledgor relating to such interests or under any Organizational Document of any such issuer, and the certificates, instruments and agreements representing such membership, partnership or other equity interests and any and all interest of such Pledgor in the entries on the books of any financial intermediary pertaining to such membership, partnership or other interests, from time to time acquired by such Pledgor in any manner.

“Additional Pledged Shares” shall mean, collectively, with respect to each Pledgor, (i) all options, warrants, rights, Equity Interests, agreements, additional shares of capital stock of whatever class of any issuer of the Initial Pledged Shares or any other equity interest in any such issuer, together with all rights, privileges, authority and powers of such Pledgor relating to such interests issued by any such issuer under any Organizational Document of any such issuer, and the certificates, instruments and agreements representing such interests and any and all interest of such Pledgor in the entries on the books of any financial intermediary pertaining to such interests, from time to time acquired by such Pledgor in any manner and (ii) all the issued and outstanding shares of capital stock of each corporation hereafter acquired or formed by such Pledgor and all options, warrants, rights, agreements or additional shares of capital stock of whatever class of such corporation, together with all rights, privileges, authority and powers of such Pledgor relating to such shares or under any Organizational Document of such corporation, and the certificates, instruments and agreements representing such shares and any and all interest of such Pledgor in the entries on the books of any financial intermediary pertaining to such shares, from time to time acquired by such Pledgor in any manner.

“Agreement” shall have the meaning assigned to such term in the preamble hereof.

“Bailee Letter” shall have the meaning assigned to such term in Section 3.4(i).

“Borrower” shall have the meaning assigned to such term in the preamble hereof.

“Charges” shall mean any and all property and other taxes, assessments and special assessments, levies, fees and all governmental charges imposed upon or assessed against, and all claims (including any landlords’, carriers’, mechanics’, workmen’s, repairmen’s, laborers’, materialmen’s, suppliers’ and warehousemen’s Liens and other charges arising by operation of law) against, all or any portion of the Pledged Collateral.

“Collateral Agent” shall have the meaning assigned to such term in the preamble.

“Collection Account” shall have the meaning set forth in the Collateral Management Agreement.

“Commercial Motor Vehicles” shall mean motor vehicles used primarily for commercial purposes.

“Commodity Account Control Agreement” shall mean a commodity account control agreement in a form that is reasonably satisfactory to the Collateral Agent.

“Contracts” shall mean, collectively, with respect to each Pledgor, all sale, service, performance, equipment or property lease contracts, agreements and grants and all other contracts, agreements or grants (in each case, whether written or oral, or third party or intercompany), to which such Pledgor is a party, and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof.

“Control” shall have the meaning specified in the UCC as applicable to the relevant Pledged Collateral.

“Control Agreements” shall mean, collectively, the Deposit Account Control Agreement(s), the Lockbox Agreements, the Securities Account Control Agreement(s) and the Commodity Account Control Agreement(s).

“Copyright Security Agreement” shall mean an agreement substantially in the form annexed hereto as Exhibit 4.

“Copyrights” shall mean, collectively, with respect to each Pledgor, all works of authorship (whether protected by statutory or common law copyright, whether established or registered in the United States or any other country or any political subdivision thereof, whether registered or unregistered and whether published or unpublished), and all copyright registrations and applications made by such Pledgor, in each case, whether now owned or hereafter created or acquired by such Pledgor, including the copyrights, registrations and applications listed on Schedule 14(c) to the Perfection Certificate, together with any and all (i) rights and privileges arising under applicable Legal Requirements with respect to such Pledgor’s use of such copyrights, (ii) renewals and extensions thereof, (iii) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable with respect thereto, including damages and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present or future infringements thereof.

“Credit Agreement” shall have the meaning assigned to such term in the recitals hereof.

“Deposit Account Control Agreement” shall mean an agreement in form and substance reasonably satisfactory to the Collateral Agent and the applicable Pledgor(s) thereto, among the Collateral Agent, the applicable Pledgor(s) and the bank at which the applicable Deposit Account is held, granting Control over such Deposit Account to the Collateral Agent.

“Deposit Accounts” shall mean, collectively, with respect to each Pledgor, (i) all “deposit accounts” as such term is defined in the UCC and in any event shall include each Lockbox Account and all accounts and sub-accounts relating to any of the foregoing accounts and (ii) all cash, funds, checks, notes and instruments from time to time on deposit in any of the accounts or sub-accounts described in clause (i) of this definition.

“Distributions” shall mean, collectively, with respect to each Pledgor, all dividends, cash, options, warrants, rights, instruments, distributions, returns of capital or principal, income, interest, profits and other property, interests (debt or equity) or proceeds, including as a result of a split, revision, reclassification or other like change of the Pledged Securities, from time to time received, receivable or otherwise distributed to such Pledgor in respect of or in exchange for any or all of the Pledged Securities or Intercompany Notes.

“Electronic Funds Transfer Instruction” shall have the meaning assigned to such term in Section 3.4(d).

“Excluded Property” shall mean (A) any lease, license, contract, property rights or agreement to which any Pledgor is a party or any of its rights or interests thereunder if and for so long as the grant of such security interest shall constitute or result in (i) the abandonment, invalidation or unenforceability of any right, title or interest of any Pledgor therein or (ii) in a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract property rights or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable Legal Requirement or principles of equity); *provided, however*, that such security interest shall attach immediately and automatically at such time as the condition causing such abandonment, invalidation or unenforceability shall be remedied and, to the extent severable, shall attach immediately to any portion of such lease, license, contract, property rights or agreement that does not result in any of the consequences specified in clauses (i) or (ii) of this definition, including any Proceeds of such lease, license, contract, property rights or agreement; (B) to the extent applicable, Pledged Interests, Pledged Shares and Successor Interests to the extent such Pledged Interests, Pledged Shares and Successor Interests are not required to be pledged as Pledged Collateral pursuant to Section 5.11(b) of the Credit Agreement; (C) the Deposit Accounts described in Section 3.4(c) as being excluded from the operation thereof; or (D) to the extent provided in Section 5.11(b) of the Credit Agreement in respect of Equity Interests in certain Foreign Subsidiaries.

“General Intangibles” shall mean, collectively, with respect to each Pledgor, all “general intangibles,” as such term is defined in the UCC, now owned or hereafter acquired by such Pledgor and, in any event, shall include (i) all of such Pledgor’s rights, title and interest in, to and

under all insurance policies and coverages and Contracts, (ii) all know-how and warranties relating to any of the Pledged Collateral or any of the Mortgaged Property (if any), (iii) any and all other rights, claims, choses-in-action and causes of action of such Pledgor against any other person and the benefits of any and all collateral or other security given by any other person in connection therewith, (iv) all guarantees, endorsements and indemnifications on, or of, any of the Pledged Collateral or any of the Mortgaged Property (if any), (v) all lists, books, records, correspondence, ledgers, printouts, files (whether in printed form or stored electronically), tapes and other papers or materials containing information relating to any of the Pledged Collateral or any of the Mortgaged Property (if any), including all customer or tenant lists, identification of suppliers, data, plans, blueprints, specifications, designs, drawings, appraisals, recorded knowledge, surveys, studies, engineering reports, test reports, manuals, standards, processing standards, performance standards, catalogs, research data, computer and automatic machinery software and programs and the like, field repair data, accounting information pertaining to such Pledgor's operations or any of the Pledged Collateral or any of the Mortgaged Property (if any) and all media in which or on which any of the information or knowledge or data or records may be recorded or stored and all computer programs used for the compilation or printout of such information, knowledge, records or data, (vi) to the extent such Pledgor's rights, title and interests therein may be assigned pursuant hereto, all Accreditations, Permits, Reimbursement Approvals, Licenses, and all other licenses, consents, permits, variances, certifications, authorizations and approvals, however characterized, of any Governmental Authority (or any person acting on behalf of a Governmental Authority) now or hereafter acquired or held by such Pledgor pertaining to operations now or hereafter conducted by such Pledgor or any of the Pledged Collateral or any of the Mortgaged Property (if any) including building permits, certificates of occupancy, environmental certificates, industrial permits or licenses and certificates of operation, and (vii) all rights to reserves, payment intangibles, deferred payments, deposits, refunds or indemnification claims to the extent the foregoing relate to any Pledged Collateral or any Mortgaged Property (if any) and claims for tax or other refunds against any Governmental Authority relating to any Pledged Collateral or any of the Mortgaged Property (if any).

"Goodwill" shall mean, collectively, with respect to each Pledgor, the goodwill connected with such Pledgor's business including (i) all goodwill connected with the use of and symbolized by any Intellectual Property Collateral in which such Pledgor has any interest, (ii) all know-how, trade secrets, customer and supplier lists, proprietary information, inventions, methods, plans, policies, procedures, formulae, descriptions, compositions, technical data, drawings, specifications, name plates, catalogs, confidential information and the right to limit the use or disclosure thereof by any person, pricing and cost information, business and marketing plans and proposals, consulting agreements, engineering contracts and such other assets which relate to such goodwill and (iii) all product lines of such Pledgor's business.

"Guarantors" shall have the meaning assigned to such term in the preamble hereof.

"Initial Pledged Interests" shall mean, with respect to each Pledgor, all membership, partnership or other Equity Interests (other than in a corporation), as applicable, of each issuer described in Schedule 11 to the Perfection Certificate, together with all rights, privileges, authority and powers of such Pledgor in and to each such issuer or under any Organizational Document of each such issuer, and the certificates, instruments and agreements representing such

membership, partnership or other interests and any and all interest of such Pledgor in the entries on the books of any financial intermediary pertaining to such membership, partnership or other interests.

“Initial Pledged Shares” shall mean, collectively, with respect to each Pledgor, the issued and outstanding shares of capital stock of each issuer that is a corporation described in Schedule 11 to the Perfection Certificate, together with all rights, privileges, authority and powers of such Pledgor relating to such interests in each such issuer or under any Organizational Document of each such issuer, and the certificates, instruments and agreements representing such shares of capital stock and any and all interest of such Pledgor in the entries on the books of any financial intermediary pertaining to such Initial Pledged Shares.

“Instruments” shall mean, collectively, with respect to each Pledgor, all “instruments,” as such term is defined in Article 9, rather than Article 3, of the UCC, and shall include all promissory notes, drafts, bills of exchange and acceptances.

“Intellectual Property Collateral” shall mean, collectively, the Patents, Trademarks, Copyrights, Licenses and Goodwill.

“Intercompany Notes” shall mean, with respect to each Pledgor, the Intercompany Note and all intercompany notes hereafter acquired by such Pledgor and all certificates, instruments or agreements evidencing the Intercompany Note and such intercompany notes, and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof to the extent permitted pursuant to the terms hereof.

“Investment Property” shall mean a security, whether certificated or uncertificated, Security Entitlement, Securities Account, Commodity Contract or Commodity Account, excluding, however, the Securities Collateral.

“Jefferies” shall have the meaning assigned to such term in the preamble hereto.

“Joinder Agreement” shall mean an agreement substantially in the form annexed hereto as Exhibit 3.

“Lenders” shall have the meaning assigned to such term in the recitals hereto.

“Licenses” shall mean, collectively, with respect to each Pledgor, all license and distribution agreements with, and covenants not to sue, any other party with respect to any Patent, Trademark or Copyright or any other patent, trademark or copyright, whether such Pledgor is a licensor or licensee, distributor or distributee under any such license or distribution agreement, together with any and all (i) renewals, extensions, supplements and continuations thereof, (ii) income, fees, royalties, damages, claims and payments now and hereafter due and/or payable thereunder and with respect thereto including damages and payments for past, present or future infringements or violations thereof, (iii) rights to sue for past, present and future infringements or violations thereof and (iv) other rights to use, exploit or practice any or all of the Patents, Trademarks or Copyrights or any other patent, trademark or copyright.

“Lockbox Accounts” shall mean, collectively, with respect to each Pledgor, (i) each lockbox or other collection account or any other Deposit Account and all accounts and sub-accounts relating to any of the foregoing accounts, in each case into which any Accounts payable by (a) Medicare/Medicaid Account Debtors or (b) Insurers (as defined in the Collateral Management Agreement) are held or have been deposited, and including in all cases the “Lockbox Accounts” (as such term is defined in the Collateral Management Agreement), and (ii) all cash, funds, checks, notes and instruments from time to time on deposit in any of the accounts or sub-accounts described in clause (i) of this definition.

“Lockbox Agreement” shall mean an agreement in form and substance reasonably satisfactory to the Collateral Agent among the Collateral Agent, the applicable Pledgor and the bank at which the applicable Lockbox Account is held, and including in all cases each “Depository Agreement” (as such term is defined in the Collateral Management Agreement).

“Lockbox Bank” shall have the meaning assigned to such term in Section 3.4(d).

“Medicaid/Medicare Account Debtor” or “Medicare/Medicaid Account Debtor” shall mean any Account Debtor which is (i) the United States of America acting under the Medicaid or Medicare program adopted pursuant to Title XVIII or Title XIX of the Social Security Act or any other federal healthcare program, including TRICARE/CHAMPUS and the Veteran’s Administration, (ii) any state or the District of Columbia acting pursuant to a Medicaid program adopted pursuant to Title XIX of the Social Security Act or any other state health care program, (iii) any agent, carrier, administrator or intermediary for any of the foregoing or (iv) any other Governmental Entity (as such term is defined in the Collateral Management Agreement).

“Mortgaged Property” shall have the meaning assigned to such term in any Mortgages (if any).

“Patent Security Agreement” shall mean an agreement substantially in the form annexed hereto as Exhibit 5.

“Patents” shall mean, collectively, with respect to each Pledgor, all patents owned by, and all patent applications and registrations made by, such Pledgor (whether established or registered or recorded in the United States or any other country or any political subdivision thereof), including those listed on Schedule 14(a) to the Perfection Certificate, together with any and all (i) rights and privileges arising under applicable Legal Requirements with respect to such Pledgor’s use of any patents, (ii) inventions and improvements described and charged therein, (iii) reissues, divisions, continuations, renewals, extensions and continuations in part thereof, (iv) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable thereunder and with respect thereto including damages and payments for past, present or future infringements thereof, (v) rights corresponding thereto throughout the world and (vi) rights to sue for past, present or future infringements thereof.

“Payroll Account” shall mean any Deposit Account of a Pledgor that is used by such Pledgor solely as a payroll account for the employees of such Pledgor; *provided* that, at no time, shall the aggregate amount contained in any such account exceed the total amount of payroll payable to such employees by such Pledgor within the immediately succeeding 30 days.

“Perfection Certificate” shall mean that certain perfection certificate dated the date hereof, executed and delivered by each Pledgor (or Pledgors) party thereto in favor of the Collateral Agent for the benefit of the Secured Parties, and each other Perfection Certificate (which shall be in the form of Exhibit I-1 to the Credit Agreement and in substance reasonably acceptable to the Collateral Agent) executed and delivered by the applicable Pledgor(s) in favor of the Collateral Agent for the benefit of the Secured Parties contemporaneously with the execution and delivery of each Joinder Agreement executed in accordance with Section 3.5, in each case, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time by a Perfection Certificate Supplement or otherwise in accordance with the Credit Agreement.

“Pledged Collateral” shall have the meaning assigned to such term in Section 2.1.

“Pledged Interests” shall mean, collectively, the Initial Pledged Interests and the Additional Pledged Interests.

“Pledged Securities” shall mean, collectively, the Pledged Interests, the Pledged Shares and the Successor Interests.

“Pledged Shares” shall mean, collectively, the Initial Pledged Shares and the Additional Pledged Shares.

“Pledgor” shall have the meaning assigned to such term in the preamble hereof.

“Secured Obligations” shall mean (i) in the case of Borrower, the Obligations (as defined in the Credit Agreement) and (ii) in the case of any Pledgor (other than Borrower), the Guaranteed Obligations.

“Securities Account Control Agreement” shall mean an agreement in form and substance reasonably satisfactory to the Collateral Agent, among the Collateral Agent, the applicable Pledgor and the applicable Securities Intermediary or Commodity Intermediary.

“Securities Collateral” shall mean, collectively, the Pledged Securities, the Intercompany Notes and the Distributions.

“Securities Pledge Amendment” shall mean an agreement substantially in the form annexed hereto as Exhibit 2.

“Successor Interests” shall mean, collectively, with respect to each Pledgor, all shares of each class of the capital stock of the successor corporation or interests or certificates of the successor limited liability company, partnership or other entity owned by such Pledgor (unless such successor is such Pledgor itself) formed by or resulting from any consolidation or merger in which any person listed on Schedule 1(a) to the Perfection Certificate is not the surviving entity.

“Trademark Security Agreement” shall mean an agreement substantially in the form annexed hereto as Exhibit 6.

“Trademarks” shall mean, collectively, with respect to each Pledgor, all trademarks (including service marks), slogans, logos, certification marks, trade dress, uniform resource locations (URL’s), domain names, corporate names and trade names, whether registered or unregistered, owned by such Pledgor and all registrations and applications for the foregoing (whether statutory or common law and whether established or registered in the United States or any other country or any political subdivision thereof), including those listed on Schedule 14(b) to the Perfection Certificate together with any and all (i) rights and privileges arising under applicable Legal Requirements with respect to such Pledgor’s use of any trademarks, (ii) goodwill associated therewith, (iii) renewals thereof, (iv) income, fees, royalties, damages and payments now and hereafter due and/or payable thereunder and with respect thereto, including damages, claims and payments for past, present or future infringements thereof, (v) rights corresponding thereto throughout the world and (vi) rights to sue for past, present and future infringements thereof.

“UCC” shall mean the Uniform Commercial Code as in effect on the date hereof in the State of New York; *provided, however*, that if by reason of mandatory provisions of applicable Legal Requirements, any or all of the attachment, perfection or priority of the Collateral Agent’s and the other Secured Parties’ security interest in any item or portion of the Pledged Collateral is governed by the Uniform Commercial Code in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions relating to such provisions.

SECTION 1.2 Interpretation. The rules of interpretation specified in the Credit Agreement (including Section 1.02 thereof) shall be applicable to this Agreement.

SECTION 1.3 Resolution of Drafting Ambiguities. Each Pledgor acknowledges and agrees that it was represented by counsel in connection with the execution and delivery hereof, that it and its counsel reviewed and participated in the preparation and negotiation hereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (i.e., the Collateral Agent) shall not be employed in the interpretation hereof.

SECTION 1.4 Perfection Certificate. The Perfection Certificate and all descriptions of Pledged Collateral, schedules, amendments and supplements thereto are and shall at all times remain a part of this Agreement.

ARTICLE II

GRANT OF SECURITY AND SECURED OBLIGATIONS

SECTION 2.1 Grant of Security Interest. As collateral security for the payment and performance in full of all the Secured Obligations now or hereafter existing, each Pledgor hereby pledges and grants to the Collateral Agent for the ratable benefit of the Secured Parties, a lien on and security interest in and to all of the right, title and interest of such Pledgor in, to and under the following property, wherever located, whether now existing or hereafter arising or acquired from time to time (collectively, the “Pledged Collateral”):

- (i) all Accounts;
- (ii) all Equipment (including Commercial Motor Vehicles), Goods, Inventory and Fixtures;
- (iii) all Documents, Instruments and Chattel Paper;
- (iv) all Contracts;
- (v) all Letter-of-Credit Rights (whether or not the letter(s) of credit is evidenced by a writing);
- (vi) all Securities Collateral;
- (vii) all Investment Property;
- (viii) all Intellectual Property Collateral;
- (ix) the Commercial Tort Claims described on Schedule 15 to the Perfection Certificate;
- (x) all General Intangibles;
- (xi) all Deposit Accounts;
- (xii) all Securities Accounts, and all Investment Property held therein or credited thereto;
- (xiii) all Commodity Accounts;
- (xiv) all money, cash, cash equivalents, securities and other property of any kind of such Pledgor;
- (xv) all Acquisition Documents and Acquisition Document Rights;
- (xvi) all Supporting Obligations;
- (xvii) all books and records pertaining to the Pledged Collateral;
- (xviii) to the extent not covered by clauses (i) through (xvii) above, choses in action and all other personal property of such Pledgor, whether tangible or intangible; and
- (xix) all Proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, and any and all Proceeds of any insurance, indemnity, warranty or guaranty payable to such Pledgor from time to time with respect to any of the foregoing.

Notwithstanding anything to the contrary contained in clauses (i) through (xix) above, the security interest created by this Agreement shall not extend to, and the term "Pledged Collateral" shall not include, any Excluded Property. In addition, (i) the Pledgors shall from time to time at the reasonable request of the Collateral Agent give written notice to the Collateral Agent identifying in reasonable detail the Excluded Property and shall provide to the Collateral Agent such other information regarding the Excluded Property as the Collateral Agent may reasonably request, and (ii) from and after the Restatement Date, no Pledgor shall permit to become effective in any document creating, governing or providing for any permit, lease or license, a provision that would prohibit the creation of a Lien on such permit, lease or license in favor of the Collateral Agent unless (x) no Event of Default has occurred and is continuing and (y) such Pledgor believes, in its reasonable judgment, that such prohibition is usual and customary in transactions of such type.

SECTION 2.2 Filings.

(a) Each Pledgor hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any relevant jurisdiction any initial financing statements (including fixture filings), continuation statements and amendments or assignments thereto that contain the information required by Article 9 of the UCC of each applicable jurisdiction for the filing of any financing statement, continuation statement or amendment relating to the Pledged Collateral, including (i) whether such Pledgor is an organization, the type of organization and any organizational identification number issued to such Pledgor, and (ii) in the case of a financing statement filed as a fixture filing or covering Pledged Collateral constituting minerals or the like to be extracted or timber to be cut, a sufficient description of the real property to which such Pledged Collateral relates. Each Pledgor agrees to provide all information described in the immediately preceding sentence to the Collateral Agent promptly upon request. Such financing statements may describe the collateral in the same manner as described herein or may contain a description of collateral that describes such property in any other manner as the Collateral Agent may determine, in its sole but reasonable discretion, is necessary, advisable or prudent to ensure the perfection or priority of the security interest in the collateral granted to the Collateral Agent in connection herewith, including, describing such property as "all assets whether now owned or hereafter acquired" or "all personal property whether now owned or hereafter acquired" (regardless of whether any particular asset comprised in the Pledged Collateral falls within the scope of Article 9 of the UCC).

(b) Each Pledgor hereby ratifies its authorization for the Collateral Agent to file in any relevant jurisdiction any initial financing statements or amendments thereto relating to the Pledged Collateral if filed prior to the date hereof.

(c) Each Pledgor hereby ratifies its authorization for the Collateral Agent, and further authorizes the Collateral Agent, to file filings with the United States Patent and Trademark Office or United States Copyright Office (or any successor office or any similar office in any other country), including this Agreement, the Copyright Security Agreement, the Patent Security Agreement and the Trademark Security Agreement, or other documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the pledge and security interest granted by such Pledgor hereunder, without the signature of such Pledgor, and naming such Pledgor, as debtor, and the Collateral Agent, as secured party.

ARTICLE III
PERFECTION; SUPPLEMENTS; FURTHER ASSURANCES;
USE OF PLEDGED COLLATERAL

SECTION 3.1 Delivery of Certificated Securities Collateral. Each Pledgor represents and warrants that all certificates, agreements or instruments representing or evidencing the Securities Collateral in existence on the date hereof have been delivered to the Collateral Agent in suitable form for transfer by delivery or accompanied by duly executed instruments of transfer or assignment in blank and that the Collateral Agent has a valid, enforceable, perfected first priority security interest therein (subject to Permitted Liens). Each Pledgor hereby agrees that all certificates, agreements or instruments representing or evidencing Securities Collateral acquired by such Pledgor after the date hereof shall promptly (and in any event within 5 Business Days) upon receipt thereof by such Pledgor be delivered to and held by or on behalf of the Collateral Agent pursuant hereto. All certificated Securities Collateral shall be in suitable form for transfer by delivery or shall be accompanied by duly executed undated instruments of transfer or assignment in blank, all in form and substance reasonably satisfactory to the Collateral Agent. The Collateral Agent shall have the right, at any time upon the occurrence and during the continuance of any Event of Default, to endorse, assign or otherwise transfer to or to register in the name of the Collateral Agent or any of its nominees or endorse for negotiation any or all of the Securities Collateral, without any indication that such Securities Collateral is subject to the security interest hereunder. In addition, the Collateral Agent shall have the right at any time in its reasonable discretion to exchange certificates representing or evidencing Securities Collateral for certificates of smaller or larger denominations.

SECTION 3.2 Perfection of Uncertificated Securities Collateral. Each Pledgor represents and warrants that the Collateral Agent has a valid, enforceable and perfected first priority security interest (subject to Permitted Liens) in all uncertificated Securities Collateral pledged by under this Agreement that are in existence on the date hereof. Each Pledgor hereby agrees that if any issuer of Securities Collateral is organized in a jurisdiction that does not permit the use of certificates to evidence equity ownership or any of the Securities Collateral are at any time not evidenced by certificates of ownership, then each applicable Pledgor shall, (i) if necessary to perfect a first priority security interest (subject to Permitted Liens) in such Securities Collateral, cause such pledge to be recorded on the equityholder register or the books of the issuer, cause the issuer to execute and deliver to the Collateral Agent an acknowledgment of the pledge of such Securities Collateral substantially in the form of Exhibit 1 annexed hereto, execute any customary pledge forms or other documents necessary or appropriate to complete the pledge and give the Collateral Agent the right to transfer such Securities Collateral under the terms hereof and, upon the Collateral Agent's reasonable request, provide to the Collateral Agent an opinion of counsel, in form and substance reasonably satisfactory to the Collateral Agent, confirming such pledge and perfection thereof and (ii) to the extent permitted by applicable Legal Requirements, cause such Securities Collateral to become certificated and delivered to the Collateral Agent in accordance with the provisions of Section 3.1.

SECTION 3.3 Financing Statements and Other Filings; Maintenance of Perfected Security Interest. Each Pledgor represents and warrants that the only filings, registrations and recordings necessary to perfect the security interest granted by each Pledgor to the Collateral

Agent in respect of the Pledged Collateral (to the extent that a security interest therein may be perfected by filing a financing statement or filing this Agreement or a short form thereof with the United States Copyright Office or the United States Patent and Trademark Office) are listed on Schedule 1 hereto. All such filings, registrations and recordings have been delivered to the Collateral Agent in completed and, to the extent necessary or appropriate, duly executed form for filing in each applicable governmental, municipal or other office specified in Schedule 1 hereto. Each Pledgor agrees that at the sole cost and expense of the Pledgors, (i) such Pledgor will maintain the security interest created by this Agreement in the Pledged Collateral as a valid, enforceable, perfected first priority security interest (subject to Permitted Liens) and shall defend such security interest against the claims and demands of all persons, (ii) such Pledgor shall furnish to the Collateral Agent from time to time statements and schedules further identifying and describing the Pledged Collateral and such other reports in connection with the Pledged Collateral as the Collateral Agent may reasonably request, all in reasonable detail and (iii) at any time and from time to time, upon the written request of the Collateral Agent, such Pledgor shall promptly and duly execute and deliver, and file and have recorded, such further instruments and documents and take such further action as the Collateral Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and the rights and powers herein granted, including (x) the filing of any financing statements and amendments thereof, continuation statements and other documents (including this Agreement) under the UCC (or other similar laws) in effect in any jurisdiction with respect to the security interest created hereby and (y) the execution and delivery of Control Agreements, the Copyright Security Agreements, the Trademark Security Agreements and the Patent Security Agreements, all in form reasonably satisfactory to the Collateral Agent and in such offices (including the United States Patent and Trademark Office and the United States Copyright Office) wherever required by applicable Legal Requirements to perfect (to the extent a security interest in such Pledged Collateral may be so perfected under applicable Legal Requirements), continue and maintain a valid, enforceable and perfected first priority security interest (subject to Permitted Liens) in the Pledged Collateral as provided herein and to preserve the other rights and interests granted to the Collateral Agent hereunder, as against third parties, with respect to the Pledged Collateral.

SECTION 3.4 Other Actions. In order to further ensure the attachment, perfection and priority of, and the ability of the Collateral Agent to enforce, the Collateral Agent's and the other Secured Parties' security interest in the Pledged Collateral, each Pledgor represents and warrants and covenants as follows, in each case at such Pledgor's own expense, to take the following actions with respect to the following Pledged Collateral:

(a) Instruments and Tangible Chattel Paper. As of the date hereof, each Pledgor hereby represents and warrants that (i) no amounts individually or in the aggregate in excess of \$250,000 payable under or in connection with any of the Pledged Collateral are evidenced by any Instrument or Tangible Chattel Paper other than the Intercompany Note and the Instruments and Tangible Chattel Paper listed on Schedule 12 to the Perfection Certificate, (ii) the Intercompany Note has been properly assigned and delivered to the Collateral Agent, accompanied by an endorsement to the Intercompany Note in the form attached thereto undated and duly executed in blank by each Pledgor and (iii) each such Instrument and each such item of Tangible Chattel Paper individually or in the

aggregate in excess of \$250,000 has been properly endorsed, assigned and delivered to the Collateral Agent, accompanied by instruments of transfer or assignment undated and duly executed in blank. If any amount, individually or in the aggregate, in excess of \$250,000 then payable under or in connection with any of the Pledged Collateral shall be evidenced by any Instrument or Tangible Chattel Paper, the Pledgor acquiring such Instrument or Tangible Chattel Paper shall promptly (and in any event within 5 Business Days) endorse, assign and deliver the same to the Collateral Agent, accompanied by such instruments of transfer or assignment undated and duly executed in blank as the Collateral Agent may from time to time reasonably request; *provided, however*, that so long as no Event of Default has occurred and is continuing, upon written request by such Pledgor, the Collateral Agent shall promptly (and in any event within 5 Business Days) return such Instrument (other than the Intercompany Note) or Tangible Chattel Paper to such Pledgor from time to time, to the extent necessary for collection in the ordinary course of such Pledgor's business.

(b) **Deposit Accounts.** Each Pledgor hereby represents and warrants that (i) as of the date hereof, each Pledgor has neither opened nor maintains any Deposit Accounts (x) in which the Pledgors customarily maintain funds in excess of \$100,000, individually or in the aggregate, other than the Deposit Accounts listed on Schedule 16(a) to the Perfection Certificate, or (y) into which Accounts payable by Medicare/Medicaid Account Debtors are held or have been deposited, other than the Deposit Accounts listed on Schedule 16(b) to the Perfection Certificate, (ii) each applicable Pledgor and the relevant bank(s) shall have executed and delivered to the Collateral Agent, with respect to Deposit Accounts and Lockbox Accounts (other than Lockbox Accounts related to Medicare/Medicaid Account Debtors), other than Payroll Accounts, a Deposit Account Control Agreement or Lockbox Agreement, as applicable, with respect to each of the Deposit Accounts listed on Schedule 16(a) to the Perfection Certificate or such Pledgor(s) has closed such accounts, (iii) the Collateral Agent shall have a valid, enforceable and perfected first priority security interest (subject to Permitted Liens) in such Deposit Accounts listed on Schedule 16(a) by Control, (iv) each applicable Pledgor and the relevant banks shall execute and deliver to the Collateral Agent a Lockbox Agreement with respect to each of the Lockbox Accounts listed on Schedule 16(b) to the Perfection Certificate or the Pledgors shall close such accounts, (v) the Collateral Agent shall have a valid and perfected first priority security interest in such Lockbox Accounts listed on Schedule 16(b) by dominion and control (subject only to non-consensual Permitted Liens arising by operation of applicable Legal Requirements and which are entitled, by operation of such Legal Requirements, to priority over the Collateral Agent's security interest therein), (vi) the Collateral Agent's first priority security interest in such Lockbox Accounts listed on Schedule 16(b) shall become and shall remain enforceable, subject only to the Collateral Agent obtaining the consent of the applicable Medicare/Medicaid Account Debtor, compliance with applicable Health Care Laws, or obtaining an Order from a court of competent jurisdiction recognizing and permitting the enforcement of such security interest and (vii) as of the date hereof, the funds contained in each Lockbox Account are either required under the terms of a Lockbox Agreement to be, or in fact are, transferred to a Deposit Account maintained by a Pledgor (and then subsequently transferred to the Collection Account) or to the Collection Account, in each case within one Business Day following receipt of such funds in the Lockbox Account subject to such lockbox agreement.

(c) No Pledgor shall hereafter establish and maintain any Deposit Account (including any Lockbox Account) unless (1) the applicable Pledgor shall have given the Collateral Agent five Business Days' prior written notice of its intention to establish such new Deposit Account with a bank or other financial institution, (2) such Bank shall be reasonably acceptable to the Collateral Agent and (3) such Bank and such Pledgor shall have duly executed and delivered to

the Collateral Agent a Deposit Account Control Agreement (or an amendment to an existing Deposit Account Control Agreement) with respect to such Deposit Account or, in the case of a Lockbox Account, a Lockbox Agreement (or an amendment to any existing Lockbox Agreement) with respect to such Lockbox Account. The Collateral Agent shall not give any instructions directing the disposition of funds from time to time credited to any Deposit Account (other than any Lockbox Account) or withhold any withdrawal rights from such Pledgor with respect to funds from time to time credited to any Deposit Account unless an Event of Default has occurred and is continuing or, after giving effect to any withdrawal, would occur. The provisions of this Section 3.4(c) shall not apply to (i) any Payroll Accounts or (ii) any other Deposit Account in which the Pledgors customarily maintain less than \$25,000, individually or in the aggregate (with respect to any financial institution) (other than any Lockbox Account). No Pledgor has granted or shall grant Control of any Deposit Account (including any Payroll Account) to any person other than the Collateral Agent.

(d) Special Provisions Regarding Accounts Payable by Medicare/Medicaid Account Debtors; Lockbox Accounts; Lockbox Agreements. Each Pledgor shall maintain, in its name and at its expense, one or more Lockbox Accounts with one or more banks reasonably acceptable to the Collateral Agent (each, including in all cases each "Lockbox Bank" (as such term is defined in the Collateral Management Agreement), a "Lockbox Bank"), and shall execute with each Lockbox Bank one or more Lockbox Agreements reasonably acceptable to the Collateral Agent, and such other agreements related thereto as the Collateral Agent may reasonably require. Each Pledgor shall ensure that all collections of its respective Accounts payable by Medicare/Medicaid Account Debtors are paid and delivered directly from Medicare/Medicaid Account Debtors into the appropriate Lockbox Account in accordance with the applicable Lockbox Agreement, and shall complete and submit to the applicable Medicare/Medicaid Account Debtors all necessary Form CMS-588 or other forms or instructions required in order to accomplish the foregoing (the "Electronic Funds Transfer Instruction"). To the extent that any Accounts payable by Medicare/Medicaid Account Debtors are collected by any Pledgor are not sent directly to the appropriate Lockbox Account but are received by any Pledgor or any of its Affiliates, such collections and proceeds shall be held in trust for the benefit of the Collateral Agent and immediately remitted, in the form received, to the appropriate Lockbox Account. No Pledgor shall instruct or authorize any Medicare/Medicaid Account Debtor to deposit amounts payable by such Medicare/Medicaid Account Debtor into any account other than the appropriate Lockbox Account, which shall at all times be subject to an effective Lockbox Agreement. Each Pledgor shall notify the Collateral Agent in writing promptly (and in any event within 5 Business Days) of any revocation, suspension, termination, restriction, limitation, denial or nonrenewal affecting any Electronic Funds Transfer Instruction.

(e) Securities Accounts and Commodity Accounts. (i) Each Pledgor hereby represents and warrants that (1) as of the date hereof, it has neither opened nor maintains any Securities Accounts or Commodity Accounts in which the amount and/or fair market value, individually or in the aggregate, of the financial assets and/or commodity contracts, as the case may be, held from time to time in all such accounts does not exceed \$100,000, other than those listed on Schedule 16(c) to the Perfection Certificate, (2) as of the date hereof, each applicable Pledgor and the relevant Securities Intermediary or Commodity Intermediary have executed and delivered to the Collateral Agent a Securities Account Control Agreement or Commodity Account Control Agreement, as applicable, for each Securities Account or Commodity Account

listed on Schedule 16(c) to the Perfection Certificate, or the Pledgors have closed such accounts, (3) the Collateral Agent has a valid, enforceable and perfected first priority security interest (other than Permitted Liens) in such Securities Accounts and Commodity Accounts by Control, and (4) it does not hold, own or have any interest in any certificated securities or uncertificated securities other than those constituting Pledged Securities and those maintained in Securities Accounts or Commodity Accounts listed on Schedule 16(c) to the Perfection Certificate or in respect of which the Collateral Agent has Control. If any Pledgor shall at any time hold or acquire any certificated securities constituting Investment Property and having a fair market value, individually or in the aggregate, in excess of \$100,000, such Pledgor shall promptly (and in any event within 5 Business Days of acquiring such security) (a) endorse, assign and deliver the same to the Collateral Agent, accompanied by such instruments of transfer or assignment undated and duly executed in blank, all in form and substance reasonably satisfactory to the Collateral Agent or (b) deliver such securities into a Securities Account with respect to which a Control Agreement is in effect in favor of the Collateral Agent. If any securities now or hereafter acquired by any Pledgor constituting Investment Property and having a fair market value, individually or in the aggregate, in excess of \$100,000 are uncertificated and are issued to such Pledgor or its nominee directly by the issuer thereof, such Pledgor shall promptly (and in any event within 5 Business Days of acquiring such security) notify the Collateral Agent thereof and pursuant to an agreement in form and substance reasonably satisfactory to the Collateral Agent, either (a) cause the issuer to agree to comply with Entitlement Orders or other instructions from the Collateral Agent as to such securities, without further consent of any Pledgor or such nominee, (b) cause a Security Entitlement with respect to such uncertificated security to be held in a Securities Account with respect to which the Collateral Agent has Control or (c) arrange for the Collateral Agent to become the registered owner of the securities. The Pledgors shall not hereafter establish and maintain any Securities Account or Commodity Account with any Securities Intermediary or Commodity Intermediary, as applicable, unless (1) the applicable Pledgor shall have given the Collateral Agent 30 days' prior written notice of its intention to establish such new Securities Account or Commodity Account with such Securities Intermediary or Commodity Intermediary, as applicable, (2) such Securities Intermediary or Commodity Intermediary, as applicable, shall be reasonably acceptable to the Collateral Agent and (3) such Securities Intermediary or Commodity Intermediary, as the case may be, and such Pledgor shall have duly executed and delivered to the Collateral Agent a Control Agreement with respect to such Securities Account or Commodity Account, as the case may be. The Collateral Agent shall not give any Entitlement Orders or instructions or directions to any issuer of uncertificated securities, Securities Intermediary or Commodity Intermediary, and shall not withhold its consent to the exercise of any withdrawal or dealing rights by such Pledgor, unless an Event of Default has occurred and is continuing, or, after giving effect to any such investment and withdrawal rights, would occur. The provisions of this [Section 3.4\(e\)](#) shall not apply to any Financial Assets credited to a Securities Account for which the Collateral Agent is the Securities Intermediary. No Pledgor shall grant Control over any Investment Property to any person other than the Collateral Agent.

(ii) As between the Collateral Agent and the Pledgors, the Pledgors shall bear the investment risk with respect to the Investment Property and Pledged Securities, and the risk of loss of, damage to, or the destruction of the Investment Property and Pledged Securities, whether in the possession of, or maintained as a security entitlement or deposit by, or subject to the control of, the Collateral Agent, a Securities Intermediary, Commodity

Intermediary, any Pledgor or any other person; *provided, however*, that nothing contained in this [Section 3.4\(e\)](#) shall release or relieve any Securities Intermediary or Commodity Intermediary of its duties and obligations to the Pledgors or any other person under any Control Agreement or under applicable Legal Requirements. Each Pledgor shall promptly pay all Charges and fees of whatever kind or nature with respect to the Investment Property and Pledged Securities pledged by it under this Agreement. In the event any Pledgor shall fail to make such payment contemplated in the immediately preceding sentence, the Collateral Agent may (but shall not be obligated to) do so for the account of such Pledgor and the Pledgors shall promptly reimburse and indemnify the Collateral Agent from all reasonable costs and expenses incurred by the Collateral Agent under this [Section 3.4\(e\)](#) in accordance with [Section 11.03](#) of the Credit Agreement.

(f) **Electronic Chattel Paper and Transferable Records.** If any amount, individually or in the aggregate, in excess of \$100,000 or payable under or in connection with any of the Pledged Collateral is evidenced by any Electronic Chattel Paper or any “transferable record” (as that term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction), the Pledgor acquiring such Electronic Chattel Paper or transferable record shall promptly (and in any event within 10 days of the acquisition thereof) notify the Collateral Agent thereof and shall take such action as the Collateral Agent may reasonably request to vest in the Collateral Agent control under Section 9-105 of the UCC of such Electronic Chattel Paper or control under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The Collateral Agent agrees with such Pledgor that the Collateral Agent will arrange, pursuant to procedures reasonably satisfactory to the Collateral Agent and so long as such procedures will not result in the Collateral Agent’s loss of control, for the Pledgor to make alterations to the Electronic Chattel Paper or transferable record permitted under Section 9-105 of the UCC or, as the case may be, Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or Section 16 of the Uniform Electronic Transactions Act for a party in control to allow without loss of control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by such Pledgor with respect to such Electronic Chattel Paper or transferable record.

(g) **Letter-of-Credit Rights.** If any Pledgor is at any time a beneficiary under a Letter of Credit now or hereafter issued in favor of such Pledgor, other than a Letter of Credit issued pursuant to the Credit Agreement or a Letter of Credit that is a “supporting obligation” (as defined in Section 9-102 of the UCC) with respect to other Pledged Collateral, in an amount individually or in the aggregate in excess of \$250,000, such Pledgor shall promptly (and in any event within 5 Business Days of becoming a beneficiary thereunder) notify the Collateral Agent thereof and such Pledgor shall, at the reasonable request of the Collateral Agent, pursuant to an agreement in form and substance reasonably satisfactory to the Collateral Agent, either (i) arrange for the issuer and any confirmer or other nominated person of such Letter of Credit to consent to an assignment to the Collateral Agent of the proceeds of any drawing under the Letter of Credit or (ii) arrange for the Collateral Agent to become the transferee beneficiary of such Letter of Credit, with the Collateral Agent agreeing, in each case, that the proceeds of any drawing under the Letter of Credit are to be applied as provided in the Credit Agreement.

(h) Commercial Tort Claims. As of the date hereof, each Pledgor hereby represents and warrants that it holds no Commercial Tort Claims having a value reasonably believed by the Pledgors to be, individually or in the aggregate, in excess of \$250,000, other than those (if any) listed on Schedule 15 to the Perfection Certificate. If any Pledgor shall at any time hold or acquire a Commercial Tort Claim having a value reasonably believed by the Pledgors to be, individually or in the aggregate, in excess of \$50,000, such Pledgor shall promptly (and in any event within 5 Business Days of acquiring such Commercial Tort Claim) notify the Collateral Agent in a writing signed by such Pledgor of the brief details thereof and grant to the Collateral Agent in such writing a security interest therein and in the Proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to the Collateral Agent.

(i) Pledged Collateral in the Possession of a Third Party. If any Equipment or Inventory (other than Equipment or Inventory leased to a customer in the ordinary course of business) is in possession or control of any third party, including any warehouseman, landlord, lessor, bailee or agent, or any Key Location, the Pledgors shall notify the Collateral Agent thereof and notify the third party of the Collateral Agent's security interest therein and obtain an acknowledgment (a "Bailee Letter") from such third party that (i) it is holding the Equipment and/or Inventory, as applicable, for the benefit of the Collateral Agent and (ii) such third party will comply with instructions from the Collateral Agent with respect to such Equipment and/or Inventory, as applicable, without further consent of any Pledgors.

SECTION 3.5 Joinder of Additional Pledgors. The Pledgors shall cause each Subsidiary of a Loan Party which, after the date hereof, shall be required to pledge any or all of its assets to the Collateral Agent for the benefit of the Secured Parties pursuant to the Credit Agreement, (a) to execute and deliver to the Collateral Agent (i) a Joinder Agreement within 30 days after the date on which it was acquired or created and (ii) a Perfection Certificate within 30 days after the date on which it was acquired or created and/or (b) in the case of a Subsidiary organized outside of the United States required to pledge any assets to the Collateral Agent, to execute and deliver such documentation as the Collateral Agent shall reasonably request and, in each case, upon such execution and delivery by the applicable Subsidiary, such Subsidiary shall constitute a "Guarantor" and a "Pledgor" for all purposes hereunder with the same force and effect as if originally named as a Guarantor and Pledgor herein. The execution and delivery of such Joinder Agreement shall not require the consent of any other Pledgor hereunder. The rights and obligations of each Pledgor hereunder shall remain in full force and effect notwithstanding the addition of any new Guarantor and Pledgor as a party to this Agreement or any other Loan Document.

SECTION 3.6 Supplements; Further Assurances. Each Pledgor shall take such further actions, and execute and deliver to the Collateral Agent such additional assignments, agreements, supplements, powers and instruments, as the Collateral Agent may in its reasonable judgment deem necessary, wherever required by applicable Legal Requirements, in order to perfect, preserve and protect the security interest in the Pledged Collateral as provided herein and the rights and interests granted to the Collateral Agent hereunder, to carry into effect the purposes hereof or better to assure and confirm unto the Collateral Agent the Pledged Collateral or permit the Collateral Agent to exercise and enforce its rights, powers and remedies hereunder with respect to any Pledged Collateral. Without limiting the generality of the foregoing, each

Pledgor shall make, execute, endorse, acknowledge, file or refile and/or deliver to the Collateral Agent from time to time upon its reasonable request such lists, descriptions and designations of the Pledged Collateral, copies of warehouse receipts, receipts in the nature of warehouse receipts, bills of lading, documents of title, vouchers, invoices, schedules, confirmatory assignments, supplements, additional security agreements, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, reports and other assurances or instruments as the Collateral Agent shall reasonably request. If an Event of Default has occurred and is continuing, the Collateral Agent may institute and maintain, in its own name or in the name of any Pledgor, such suits and proceedings as the Collateral Agent may be advised by counsel as necessary or expedient to prevent any impairment of the security interest in any Pledged Collateral or the perfection or priority thereof. If (x) an Event of Default has occurred and is continuing or (y) a landlord of any Pledgor shall provide notice of default under or termination of any lease to which a Pledgor is a party, if directed by the Collateral Agent, such Pledgor shall use commercially reasonable efforts to cause such landlord to agree (in a writing addressed to the Collateral Agent) to extend the time period provided by such landlord for the removal of Pledged Collateral from the leased premises for a period, and otherwise on terms and conditions, reasonably satisfactory to the Collateral Agent; *provided* that, in connection therewith, no Pledgor shall agree, directly or indirectly, with any landlord to abandon any Pledged Collateral or waive or limit such Pledgor's rights in any Pledged Collateral. All of the foregoing shall be at the sole cost and expense of the Pledgors.

ARTICLE IV

REPRESENTATIONS, WARRANTIES AND COVENANTS

Each Pledgor represents, warrants and covenants as follows:

SECTION 4.1 Title. Such Pledgor has good and marketable title in its Pledge Collateral and, except for the Lien and security interest granted to the Collateral Agent for the ratable benefit of the Secured Parties pursuant to this Agreement and Permitted Liens, such Pledgor owns (or either owns or has a License to, in the case of Intellectual Property) and, as to Pledged Collateral acquired by it from time to time after the date hereof, will either own or hold a License to the rights in each item of Pledged Collateral pledged by it hereunder free and clear of any and all Liens or claims of others (except Permitted Liens). Such Pledgor has not filed, nor authorized any third party to file a financing statement, or other public notice with respect to all or any part of the Pledged Collateral on file or of record in any public office, except such as have been filed in favor of the Collateral Agent pursuant to this Agreement or as are permitted by the Credit Agreement or otherwise relate to Permitted Liens. No person other than any Pledgor or the Collateral Agent has, or will have, control or possession of all or any part of the Pledged Collateral, except as expressly permitted by the Loan Documents.

SECTION 4.2 Validity of Security Interest. The security interest in and Lien on the Pledged Collateral granted to the Collateral Agent for the ratable benefit of the Secured Parties hereunder constitutes (a) a legal and valid security interest in and Lien on all the Pledged Collateral securing the payment and performance in full of the Secured Obligations, and (b) subject to the filings and other actions described in Schedule 1 hereto, a valid, enforceable, and except to the extent otherwise expressly permitted under Article III hereof, perfected first

priority security interest (other than Permitted Liens) in all the Pledged Collateral. The security interest and Lien granted to the Collateral Agent for the ratable benefit of the Secured Parties pursuant to this Agreement in and on the Pledged Collateral will at all times constitute a valid, enforceable, and except to the extent otherwise expressly permitted under Article III, perfected, continuing first priority security interest therein, subject only to Permitted Liens.

SECTION 4.3 Defense of Claims; Transferability of Pledged Collateral. Each Pledgor shall, at its own cost and expense, use commercially reasonable efforts to defend title to the Pledged Collateral pledged by it hereunder and the security interest therein granted to the Collateral Agent and the priority thereof (subject to Permitted Liens) required hereunder against all claims and demands of all persons, at its own cost and expense, at any time claiming any interest therein adverse to the Collateral Agent or any other Secured Party. There is no agreement that restricts the transferability of any material portion of the Pledged Collateral or otherwise materially impairs or conflicts with any Pledgor's obligations or the rights of the Collateral Agent or any other Secured Party hereunder or any other Loan Document, and the Pledgors shall not enter into any agreement or take any other action that would restrict the transferability of any material portion of the Pledged Collateral or otherwise materially impair or conflict with any Pledgor's obligations or the rights of the Collateral Agent or any other Secured Party hereunder or any other Loan Document.

SECTION 4.4 Other Financing Statements. No Pledgor has filed, nor authorized any third party to file (nor will there be) any valid or effective financing statement (or similar statement or instrument of registration under the law of any jurisdiction) covering or purporting to cover any interest of any kind in the Pledged Collateral other than financing statements and other statements and instruments filed in favor of the Collateral Agent relating to this Agreement or relating to Permitted Liens. So long as any of the Secured Obligations remain unpaid and unperformed, no Pledgor shall execute, authorize or permit to be filed in any public office any financing statement (or similar statement or instrument of registration under the law of any jurisdiction) relating to any Pledged Collateral, except financing statements and other statements and instruments filed or to be filed in respect of and covering the security interests granted by such Pledgor to the holder(s) of Permitted Liens.

SECTION 4.5 Chief Executive Office; Change of Name; Jurisdiction of Organization, etc. Such Pledgor shall (i) unless it shall have given the Collateral Agent not less than 30 days' prior written notice (in the form of an Officers' Certificate), not change its name, identity, legal structure (whether by merger, consolidation, change in corporate form or otherwise), type of organization or jurisdiction of organization or organizational identification number if it has one and (ii) take all actions necessary or advisable to maintain the continuous validity, perfection and the same or better priority (subject to Permitted Liens) of the Collateral Agent's security interest in the Pledged Collateral granted or intended to be granted hereunder, which in the case of any merger or other change in organizational structure shall include delivering a written notice (in the form of an Officers' Certificate) upon completion of such merger or other change in organizational structure confirming the grant of the security interest under this Agreement. Unless it shall have given the Collateral Agent prior written notice (in the form of an Officers' Certificate), such Pledgor shall not change its chief executive office, place of business or its mailing address. If such Pledgor does not have an organizational identification number and later obtains one, such Pledgor shall forthwith notify the Collateral Agent in writing

of such organizational identification number. The Collateral Agent may rely on opinions of counsel as to whether any or all UCC financing statements of the Pledgors need to be amended as a result of any of the changes described in this Section 4.5. If any Pledgor fails to provide information to the Collateral Agent about such changes on a timely basis, the Collateral Agent shall not be liable or responsible to any party for any failure to maintain a valid, enforceable and perfected security interest with the priority required hereunder in such Pledgor's property constituting Pledged Collateral, for which the Collateral Agent needed to have information relating to such changes. The Collateral Agent shall have no duty to inquire about such changes if any Pledgor does not inform the Collateral Agent of such changes, the parties acknowledging and agreeing that it would not be feasible or practical for the Collateral Agent to search for information on such changes if such information is not provided by any Pledgor.

SECTION 4.6 Location of Inventory and Equipment. As of the date hereof, all Equipment and Inventory of such Pledgor, individually or in the aggregate with a fair market value in excess of \$250,000, is located at its chief executive office or such other location listed on Schedule 2(a), 2(b), 2(c) or 2(d) to the Perfection Certificate. Such Pledgor shall not move any Equipment or Inventory, with a fair market value individually or in the aggregate in excess of \$250,000, to any location other than (x) its chief executive office, (y) any other location listed on Schedule 2(a), 2(b), 2(c) or 2(d) to the Perfection Certificate or (z) any other location within the continental United States provided that, in each case the requirements of Section 3.4(i) are satisfied with respect to such location, until it shall have given the Collateral Agent not less than 30 days' prior written notice, or such shorter period within which the requirements set forth in this Section 4.6 are satisfied, but in any event, not less than 10 days' prior written notice, (in the form of an Officers' Certificate) of its intention so to do, clearly describing such new location within the continental United States and providing such other information in connection therewith as the Collateral Agent may reasonably request. Notwithstanding the foregoing, with respect to any location at which Equipment or Inventory, with a fair market value individually or in the aggregate in excess of \$250,000, such Pledgor shall have taken all action reasonably satisfactory to the Collateral Agent to maintain the perfection and priority (subject to Permitted Liens) of the security interest of the Collateral Agent in the Pledged Collateral intended to be granted hereby, including, to the extent required under Section 3.4(i), obtaining waivers of landlord's or warehousemen's and/or bailee's liens with respect to such new location, if applicable, and if reasonably requested by the Collateral Agent. Such Pledgor agrees to provide the Collateral Agent with prompt notice following the movement of any Equipment or Inventory, individually or in the aggregate with a fair market value in excess of \$250,000, to any location other than one that is listed in Schedule 2(a), 2(b), 2(c) or 2(d) to the Perfection Certificate or a location within the continental United States in respect of which the requirements of Section 3.4(i) have been satisfied.

SECTION 4.7 Corporate Names; Prior Transactions. Except as set forth in Schedules 1(a) and (b) to the Perfection Certificate, such Pledgor has not, during the past five years, been known by or used any other corporate or fictitious name or been a party to any merger or consolidation, or acquired all or substantially all of the assets of any person.

SECTION 4.8 Due Authorization and Issuance. All of the Initial Pledged Shares have been, and to the extent any Pledged Shares are hereafter issued, such Pledged Shares will be, upon such issuance, duly authorized, validly issued and fully paid and non-assessable. All of

the Initial Pledged Interests have been, and to the extent any Pledged Interests are hereafter issued, such Pledged Interests will be, fully paid for, and there is, or will be with respect to any Pledged Interests hereinafter issued will be, no amount or other obligation owing by any Pledgor to any issuer of the Initial Pledged Interests or any hereinafter issued Pledged Interests, as applicable, in exchange for or in connection with the issuance of the Initial Pledged Interests or such Pledge Interests hereinafter issued or any Pledgor's status as a partner or a member of any issuer of the Initial Pledged Interests.

SECTION 4.9 Consents, etc. No consent of any party (including equityholders or creditors of such Pledgor) and no consent, authorization, approval, license or other action by, and no notice to or filing with, any Governmental Authority or regulatory body or other person is required (A) for the exercise by the Collateral Agent of the voting or other rights provided for in this Agreement or (B) for the exercise by the Collateral Agent of the remedies in respect of the Pledged Collateral pursuant to this Agreement. In the event that the Collateral Agent desires to exercise any remedies, voting or consensual rights or attorney-in-fact powers set forth in this Agreement and determines it necessary to obtain any approvals or consents of any Governmental Authority or regulatory body or any other person therefor, then, upon the reasonable request of the Collateral Agent, each Pledgor agrees to use commercially reasonable efforts to assist and aid the Collateral Agent to obtain as soon as practicable any necessary approvals or consents for the exercise of any such remedies, rights and powers.

SECTION 4.10 Pledged Collateral. All information set forth herein, including the schedules annexed hereto, and all information contained in any documents, schedules and lists heretofore delivered to any Secured Party, including the Perfection Certificate and the schedules thereto, in connection with this Agreement, in each case, relating to the Pledged Collateral, is accurate and complete in all material respects.

SECTION 4.11 Insurance. In the event that the proceeds of any insurance claim are paid after the Collateral Agent has exercised its right to foreclose after an Event of Default, such Net Cash Proceeds shall be paid to the Collateral Agent to satisfy any deficiency remaining after such foreclosure. The Collateral Agent shall retain its interest in the insurance policies and coverages required to be maintained pursuant to the Credit Agreement during any redemption period.

SECTION 4.12 Payment of Taxes; Compliance with Legal Requirements; Contesting Liens; Charges. Each Pledgor may at its own expense contest the validity, amount or applicability of any Charges so long as the contest thereof shall be conducted in accordance with, and permitted pursuant to the provisions of, the Credit Agreement. Notwithstanding the foregoing sentence, (i) no contest of any such obligation may be pursued by such Pledgor if such contest would expose the Collateral Agent or any other Secured Party to (A) any possible criminal liability or (B) any civil liability for failure to comply with such obligations unless such Pledgor shall have furnished, if reasonably requested by the Collateral Agent or any other Secured Party, a bond or other security therefor reasonably satisfactory to the Collateral Agent, or such Secured Party, as the case may be, and (ii) if at any time payment or performance of any obligation contested by such Pledgor pursuant to this Section 4.12 shall become necessary to prevent the imposition of remedies because of non-payment, such Pledgor shall pay or perform

the same in sufficient time to prevent the imposition of remedies in respect of such default or prospective default.

SECTION 4.13 Access to Pledged Collateral, Books and Records; Other Information. Each Pledgor shall permit representatives of the Collateral Agent upon reasonable notice to visit and inspect any of its assets or properties, including to conduct any environmental assessments, sampling, testing or monitoring of the Mortgaged Property, and examine and make abstracts from any of its books and records (including insurance policies) at any reasonable time and upon reasonable notice. Such Pledgor shall, at any and all times, within a reasonable time after written request by the Collateral Agent, furnish or cause to be furnished to the Collateral Agent, in such manner and in such detail as may be reasonably requested by the Collateral Agent, additional information with respect to the Pledged Collateral. If a Default occurs and is continuing, the Collateral Agent shall have the right, but not the obligation, to access any Mortgaged Property to undertake any Response that the Collateral Agent in its reasonable discretion deems appropriate at the reasonable cost and expense of the Pledgors.

ARTICLE V

CERTAIN PROVISIONS CONCERNING SECURITIES COLLATERAL

SECTION 5.1 Pledge of Additional Securities Collateral. Each Pledgor shall, upon obtaining any Pledged Securities or intercompany notes of any person (other than Excluded Property), accept the same in trust for the benefit of the Collateral Agent and promptly (and in any event within 3 Business Days thereafter) deliver to the Collateral Agent a Securities Pledge Amendment, duly executed by such Pledgor, and the certificates and other documents required under Section 3.1 and Section 3.2 hereof in respect of the additional Pledged Securities or intercompany notes that are to be pledged pursuant to this Agreement, and confirming the attachment of the Lien hereby created on and in respect of such additional Pledged Securities or intercompany notes. Each Pledgor hereby authorizes the Collateral Agent to attach each Securities Pledge Amendment to this Agreement and agrees that all Pledged Securities or intercompany notes listed on any Securities Pledge Amendment delivered to the Collateral Agent shall for all purposes hereunder be considered Pledged Collateral.

SECTION 5.2 Voting Rights; Distributions; etc.

(i) So long as no Event of Default shall have occurred and be continuing:

(A) each Pledgor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Securities Collateral or any part thereof for any purpose not inconsistent with the terms or purposes of this Agreement, any other Loan Document or any other document evidencing the Secured Obligations; *provided, however*, that no Pledgor shall in any event exercise such rights in any manner that is disadvantageous to any Agent or Lender in any material respect; and

(B) each Pledgor shall be entitled to receive and retain, and to utilize free and clear of the Lien hereof, any and all Distributions, but only if and to the

extent made in accordance with the provisions of the Credit Agreement; *provided, however*, that any and all such Distributions consisting of rights or interests in the form of Pledged Securities or Intercompany Notes shall promptly (and in any event within 5 Business Days after receipt thereof) be delivered to the Collateral Agent to hold as Pledged Collateral and shall, if received by any Pledgor, be received in trust for the benefit of the Collateral Agent, be segregated from the other property or funds of such Pledgor and be forthwith delivered to the Collateral Agent as Pledged Collateral in the same form as so received (with any necessary or reasonably requested endorsement).

(ii) Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent may implement either or both of the following remedies, effective 5 Business Days after written notice of such implementation is provided to the Pledgors:

(A) all rights of each Pledgor to exercise the voting and other consensual rights it would otherwise be entitled to exercise pursuant to Section 5.2(i)(A) shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall thereupon have the sole right to exercise such voting and other consensual rights until the applicable Event of Default is no longer continuing, in which case the Collateral Agent's rights under this Section 5.2(ii)(A) shall cease to be effective, subject to revesting in the event of a subsequent Event of Default that is continuing; and

(B) all rights of each Pledgor to receive Distributions that it would otherwise be authorized to receive and retain pursuant to Section 5.2(i)(B) without further action shall cease and all such rights shall thereupon become vested in the Collateral Agent, which shall thereupon have the sole right to receive and hold as Pledged Collateral such Distributions until the applicable Event of Default is no longer continuing, in which case the Collateral Agent's rights under this Section 5.2(ii)(B) shall cease to be effective, subject to revesting in the event of a subsequent Event of Default that is continuing.

(iii) Each Pledgor shall, at its sole cost and expense, from time to time execute and deliver to the Collateral Agent appropriate instruments as the Collateral Agent may reasonably request in order to permit the Collateral Agent to exercise the voting and other rights which it may be entitled to exercise pursuant to Section 5.2(ii)(A) and to receive all Distributions which it may be entitled to receive under Section 5.2(ii)(B).

(iv) All Distributions that are received by any Pledgor contrary to the provisions of Section 5.2(ii)(B) shall be received in trust for the benefit of the Collateral Agent, shall be segregated from the other funds of such Pledgor and shall immediately be paid over to the Collateral Agent as Pledged Collateral in the same form as so received (with any necessary or reasonably requested endorsement).

SECTION 5.3 Default. As of the date hereof, such Pledgor is not in default in the payment of any portion of any mandatory capital contribution, if any, required to be made under any agreement to which such Pledgor is a party relating to the Pledged Securities pledged by it, and such Pledgor is not in violation of any other provisions of any such agreement to which such Pledgor is a party, or otherwise in default or violation thereunder. As of the date hereof, no

Securities Collateral pledged by such Pledgor is subject to any defense, offset or counterclaim, nor have any of the foregoing been asserted or alleged against such Pledgor by any person with respect thereto, and as of the date hereof, there are no certificates, instruments, documents or other writings (other than the Organizational Documents of such Pledgor and certificates, if any, delivered to the Collateral Agent) which evidence any Pledged Securities of such Pledgor.

SECTION 5.4 Certain Agreements of Pledgors as Issuers and Holders of Equity Interests.

(i) In the case of each Pledgor that is an issuer of Securities Collateral, such Pledgor agrees to be bound by the terms of this Agreement relating to the Securities Collateral issued by it and will comply with such terms insofar as such terms are applicable to it.

(ii) In the case of each Pledgor that is a partner, member or holder of any Equity Interests in a partnership, limited liability company or other entity, such Pledgor hereby consents to the extent required by the applicable Organizational Documents of such Pledgor to the pledge by each other Pledgor, pursuant to the terms hereof, of the Pledged Interests in such partnership, limited liability company or other entity and, upon the occurrence and during the continuance of an Event of Default, to the transfer of such Pledged Interests to the Collateral Agent or its nominee and to the substitution of the Collateral Agent or its nominee as a substituted partner, member or holder of Equity Interests in such partnership, limited liability company or other entity with all the rights, powers and duties of a general partner, a limited partner, member or holder of Equity Interests, as the case may be.

ARTICLE VI

CERTAIN PROVISIONS CONCERNING INTELLECTUAL
PROPERTY COLLATERAL

SECTION 6.1 Representations and Warranties. The representations and warranties set forth in Section 3.06 of the Credit Agreement are hereby incorporated herein by reference and made a part hereof.

SECTION 6.2 Grant of License. For the purpose of enabling the Collateral Agent, during the continuance of an Event of Default, to exercise rights and remedies under Article VIII hereof at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, each Pledgor hereby grants to the Collateral Agent, to the extent licensable, exercisable solely upon the occurrence and during the continuance of any Event of Default, an irrevocable, non-exclusive worldwide license (exercisable without payment of royalty or other compensation to such Pledgor) to use, assign, license, sublicense or otherwise dispose of the Intellectual Property Collateral now owned or hereafter acquired by such Pledgor (excluding, for the avoidance of doubt, any License that by its terms is prohibited from being so licensed to the extent constituting Excluded Property), wherever the same may be located. Such license shall include access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout hereof.

SECTION 6.3 Registration. Except pursuant to material licenses and other user agreement entered into by any Pledgor in the ordinary course of business, on and as of the date hereof (i) each Pledgor owns and/or possesses the right to use, and has done nothing to authorize or enable any other person to use, any Copyright, Patent or Trademark listed on Schedules 14(a)-(c) to the Perfection Certificate, and (ii) all registrations listed on Schedules 14(a)-(c) to the Perfection Certificate are valid and in full force and effect.

SECTION 6.4 No Violations or Proceedings. On and as of the date hereof, (i) there is no material violation by others of any right of such Pledgor with respect to any Copyright, Patent or Trademark listed on Schedules 14(a)-(c) to the Perfection Certificate, respectively, pledged by it under the name of such Pledgor, (ii) such Pledgor is not infringing upon any Copyright, Patent or Trademark of any other person other than such infringement that, individually or in the aggregate, would not (and could not reasonably be expected to) result in a material adverse effect on the value or utility of the Intellectual Property Collateral or any portion thereof material to the use and operation of the Pledged Collateral or the Mortgaged Property and (iii) no proceedings have been instituted or are pending against such Pledgor or, to such Pledgor's knowledge, threatened, and no such claim against such Pledgor has been received by such Pledgor since December 31, 2009 alleging any such violation.

SECTION 6.5 Protection of Collateral Agent's Security. On a continuing basis, each Pledgor shall, at its sole cost and expense, (i) promptly following its becoming aware thereof, notify the Collateral Agent of (A) any materially adverse determination in any proceeding in the United States Patent and Trademark Office or the United States Copyright Office with respect to any material Patent, Trademark or Copyright material to the use and operation of the Pledged Collateral or any Mortgage Property (if any) or (B) the institution of any proceeding or any adverse determination in any federal, state or local court or administrative body regarding such Pledgor's claim of ownership in or right to use any of such Intellectual Property Collateral, its right to register such Intellectual Property Collateral or its right to keep and maintain such registration in full force and effect, (ii) maintain and protect such Intellectual Property Collateral as presently used and operated and as contemplated by the Credit Agreement, (iii) not permit to lapse or become abandoned any such Intellectual Property Collateral as presently used and operated and as contemplated by the Credit Agreement, and not settle or compromise any pending or future litigation or administrative proceeding with respect to such Intellectual Property Collateral without the prior written consent of the Collateral Agent, (iv) upon such Pledgor obtaining knowledge thereof, promptly notify the Collateral Agent in writing of any event that may be reasonably expected to materially and adversely affect the value or utility of such Intellectual Property Collateral, the ability of such Pledgor or the Collateral Agent to dispose of such Intellectual Property Collateral or any portion thereof or the rights and remedies of the Collateral Agent in relation thereto, including a levy or written threat of levy or any legal process against such Intellectual Property Collateral owned or licensed by such Pledgor or any portion thereof, (v) not license such Intellectual Property Collateral other than licenses entered into by such Pledgor in, or incidental to, the ordinary course of business, or amend or permit the amendment of any of the licenses in a manner that materially and adversely affects the right to receive payments thereunder, or in any manner that would materially impair the value of such Intellectual Property Collateral or the Lien on and security interest in such Intellectual Property Collateral intended to be granted to the Collateral Agent for the ratable benefit of the Secured Parties, without the consent of the Collateral Agent, (vi) diligently keep adequate records

respecting such Intellectual Property Collateral and (vii) furnish to the Collateral Agent from time to time upon the Collateral Agent's request therefor reasonably detailed statements and amended schedules further identifying and describing such Intellectual Property Collateral and such other materials evidencing or reports pertaining to such Intellectual Property Collateral as the Collateral Agent may from time to time request.

SECTION 6.6 After-Acquired Property. If any Pledgor shall, at any time before the Secured Obligations have been paid and performed in full (other than contingent indemnification obligations that, pursuant to the provisions of the Credit Agreement or the Security Documents, survive the termination thereof), (i) obtain any rights to any additional Intellectual Property Collateral material to the use and operation of the Pledged Collateral or any Mortgaged Property, or (ii) become entitled to the benefit of any such additional Intellectual Property Collateral or any renewal or extension thereof, including any reissue, division, continuation, or continuation-in-part of any such Intellectual Property Collateral, or any improvement on any such Intellectual Property Collateral, the provisions hereof shall automatically apply thereto and any such item enumerated in clause (i) or (ii) of this sentence with respect to such Pledgor shall automatically constitute Intellectual Property Collateral if such would have constituted Intellectual Property Collateral at the time of execution hereof and be subject to the Lien and security interest created by this Agreement without further action by any party (excluding any Intellectual Property Collateral that constitutes Excluded Property). Each Pledgor shall promptly (i) provide to the Collateral Agent written notice of any of the foregoing and (ii) confirm the attachment of the Lien and security interest created by this Agreement to any rights described in clauses (i) and (ii) of the immediately preceding sentence of this Section 6.6 by execution of an instrument in form reasonably acceptable to the Collateral Agent and the filing of any instruments or statements as shall be reasonably necessary or reasonably requested by the Collateral Agent to preserve, protect or perfect the Collateral Agent's security interest in such Intellectual Property Collateral to the extent such security interest in such Intellectual Property Collateral may be perfected under applicable Legal Requirements, including the filing of a security agreement or amendments or assignments thereto with the United States Patent and Trademark Office or United States Copyright Office. Further, each Pledgor authorizes the Collateral Agent to modify this Agreement by amending Schedules 14(a)-(c) to the Perfection Certificate to include any Intellectual Property Collateral acquired or arising after the date hereof of such Pledgor.

SECTION 6.7 Litigation. Unless there shall occur and be continuing any Event of Default, each Pledgor shall have the right to commence and prosecute in its own name, as the party in interest, for its own benefit and at the sole cost and expense of the Pledgors, such applications for protection of the Intellectual Property Collateral and suits, proceedings or other actions to prevent the infringement, counterfeiting, unfair competition, dilution, diminution in value or other damage as are necessary to protect the Intellectual Property Collateral. Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent shall have the right, but shall in no way be obligated, to file applications for protection of the Intellectual Property Collateral and/or bring suit in the name of any Pledgor, the Collateral Agent or the Secured Parties to enforce the Intellectual Property Collateral and any license thereunder. In the event of such suit, each Pledgor shall, at the reasonable request of the Collateral Agent, do any and all lawful acts and execute any and all documents reasonably requested by the Collateral Agent in aid of such enforcement and the Pledgors shall promptly reimburse and indemnify the Collateral Agent for all reasonable costs and expenses incurred by the Collateral Agent in the

exercise of its rights under this Section 6.7 in accordance with Section 11.03 of the Credit Agreement. In the event that the Collateral Agent shall elect not to bring such suit to enforce the Intellectual Property Collateral, each Pledgor agrees, at the reasonable request of the Collateral Agent, to take all actions necessary, whether by suit, proceeding or other action, to prevent the infringement, counterfeiting, unfair competition, dilution, diminution in value of or other damage to any of the Intellectual Property Collateral by others and for that purpose agrees to diligently maintain any suit, proceeding or other action against any person so infringing necessary to prevent such infringement.

SECTION 6.8 Intent-to-Use Trademark and Service Mark Applications. In connection with any intent-to-use trademark or service mark applications whether listed on Schedule 14(b) to the Perfection Certificate or otherwise, the Pledgors shall file a bona fide statement of use and shall take such other actions or steps as shall be required by the United States Patent and Trademark Office, to entitle such application to registration within 10 Business Days following the date of first use in commerce of the mark that is the subject of such application. Upon acceptance of such bona fide statement of use by the United States Patent and Trademark Office, such application shall automatically become subject to the security interest granted herein. The Pledgors shall execute any further documents and instruments as the Collateral Agent reasonably may deem necessary or appropriate to confirm, implement, or enforce the Collateral Agent's security interest in such applications. If the Pledgors fail to execute such further documents and instruments within 5 Business Days of presentment, the Collateral Agent may, in the name of, and on behalf of, the Pledgors, execute such documents and instruments and make appropriate disposition of same, and the Pledgors hereby irrevocably appoint the Collateral Agent as their lawful attorney-in-fact with full power to do so. The foregoing power of attorney is coupled with an interest and such appointment shall be irrevocable for the term hereof.

ARTICLE VII

CERTAIN PROVISIONS CONCERNING ACCOUNTS

SECTION 7.1 Special Representation and Warranties. As of the time when each of its Accounts arises, each Pledgor shall be deemed to have represented and warranted that such Account and all records, papers and documents relating thereto (i) are genuine and correct and in all material respects what they purport to be, subject to ordinary course accounts receivable adjustments and refunds, (ii) to the Pledgor's knowledge, represent the legal, valid and binding obligation of the account debtor, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability, evidencing indebtedness unpaid and owed by such account debtor, arising out of the performance of labor or services or the sale, lease, license, assignment or other disposition and delivery of the goods or other property listed therein or out of an advance or a loan, (iii) will, in the case of an Account, except for the original or duplicate original invoice sent to the applicable purchaser evidencing such purchaser's account, be the only original writing evidencing and embodying such obligation of the account debtor named therein and (iv) are in all material respects in compliance and conform with all applicable material Legal Requirements.

SECTION 7.2 Maintenance of Records. Each Pledgor shall keep and maintain at its own cost and expense complete records of each Account, in a manner consistent with its customary business practice, including records of all payments received, all credits granted thereon, all merchandise returned and all other documentation relating thereto. Each Pledgor shall, at such Pledgor's sole cost and expense, upon the Collateral Agent's demand made at any time after the occurrence and during the continuance of any Event of Default, deliver all tangible evidence of Accounts, including all documents evidencing Accounts and any books and records relating thereto to the Collateral Agent or to its representatives (copies of which evidence and books and records may be retained by such Pledgor). Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent may transfer a full and complete copy of any Pledgor's books, records, credit information, reports, memoranda and all other writings relating to the Accounts to and for the use by any person that has acquired or is contemplating acquisition of an interest in the Accounts or the Collateral Agent's security interest therein without the consent of any Pledgor, but subject at all times to Section 11.12 of the Credit Agreement.

SECTION 7.3 Legend. At the reasonable request of the Collateral Agent and in form and manner reasonably satisfactory to the Collateral Agent, at any time after the occurrence and during the continuance of any Event of Default, each Pledgor shall legend the Accounts to the extent represented or evidenced by a written instrument and the other books, records and documents of such Pledgor evidencing or pertaining to the Accounts with an appropriate reference to the fact that (i) the Accounts have been assigned for collateral purposes to the Collateral Agent for the ratable benefit of the Secured Parties and that the Collateral Agent has a security interest therein and (ii) with respect to Medicare/Medicaid Account Debtors, each Pledgor has waived any and all defenses and counterclaims it may have or could interpose in any such action or procedure brought by the Collateral Agent or any Secured Party to obtain a court order recognizing the collateral assignment or security interest and Lien of the Collateral Agent pursuant to the Security Documents in and to any Account or other Pledged Collateral and that the Collateral Agent and/or the Secured Parties may seek to obtain (x) the consent of the applicable Medicare/Medicaid Account Debtor(s) to recognize, or (y) a court order recognizing, the collateral assignment or security interest and Lien of the Collateral Agent in and to all Accounts and other Pledged Collateral payable by Medicare/Medicaid Account Debtors.

SECTION 7.4 Modification of Terms, etc. No Pledgor shall rescind or cancel any obligations evidenced by any Account or modify any term thereof or make any adjustment with respect thereto except in the ordinary course of business, or extend or renew any such obligations except in the ordinary course of business or compromise or settle any dispute, claim, suit or legal proceeding relating thereto or sell any Account or interest therein except in the ordinary course of business; in each case, without the prior written consent of the Collateral Agent.

SECTION 7.5 Collection. Each Pledgor shall cause to be collected from the account debtor of each of the Accounts, as and when due in the ordinary course of business and consistent with its customary business practice (including Accounts that are delinquent, such Accounts to be collected in accordance with generally accepted commercial collection procedures), any and all amounts owing under or on account of such Account, and apply forthwith upon receipt thereof all such amounts as are so collected to the outstanding balance of such Account, except that any Pledgor may, with respect to an Account, allow in the ordinary

course of business (i) accounts receivable adjustments or refunds and (ii) such extensions of time to pay amounts due in respect of Accounts and such other modifications of payment terms or settlements in respect of Accounts as shall be commercially reasonable in the circumstances, all in accordance with such Pledgor's ordinary course of business consistent with its collection practices as in effect from time to time and in compliance with applicable Legal Requirements. The costs and expenses (including attorneys' fees) of collection, in any case, whether incurred by any Pledgor, the Collateral Agent or any Secured Party, shall be paid by the Pledgors. Nothing in this Agreement shall prohibit any Pledgor from writing off bad debt in the ordinary course of business, consistent with its customary business practice. The Loan Parties acknowledge that the Collateral Management Agreement provides for the application of all collections on Accounts and reference to such Collateral management is incorporated herein.

ARTICLE VIII

REMEDIES

SECTION 8.1 Remedies. Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent may from time to time exercise in respect of the Pledged Collateral, in addition to the other rights and remedies provided for herein or otherwise available to it, the following remedies:

(i) Personally, or by agents or attorneys, immediately take possession of the Pledged Collateral or any part thereof, from any Pledgor or any other person who then has possession of any part thereof with or without notice or process of law (other than Pledged Collateral consisting of Accounts owed or owing by Medicare/Medicaid Account Debtors to any Pledgor, absent a court order or compliance with applicable Legal Requirements), and for that purpose, subject to Section 5.07 of the Credit Agreement, may enter upon any Pledgor's premises where any of the Pledged Collateral is located, remove such Pledged Collateral, remain present at such premises to receive copies of all communications and remittances relating to the Pledged Collateral and use in connection with such removal and possession any and all services, supplies, aids and other facilities of any Pledgor;

(ii) Demand, sue for, collect or receive any money or property at any time payable or receivable in respect of the Pledged Collateral including instructing the obligor or obligors on any agreement, instrument or other obligation constituting part of the Pledged Collateral to make any payment required by the terms of such agreement, instrument or other obligation directly to the Collateral Agent (other than Pledged Collateral consisting of Accounts owed or owing by Medicare/Medicaid Account Debtors to any Pledgor, absent a court order or compliance with applicable Legal Requirements), and in connection with any of the foregoing, compromise, settle, extend the time for payment and make other modifications with respect thereto; *provided, however*, that in the event that any such payments are made directly to any Pledgor, such Pledgor shall segregate all amounts received pursuant thereto in trust for the benefit of the Collateral Agent and shall promptly (but in no event later than one Business Day after receipt thereof) pay such amounts to the Collateral Agent;

(iii) Subject to clause (ix) below, Section 8.2 and Section 8.4, sell, assign, grant a license to use or otherwise liquidate, or direct any Pledgor to sell, assign, grant a

license to use or otherwise liquidate, any and all investments made in whole or in part with the Pledged Collateral or any part thereof, and take possession of the proceeds of any such sale, assignment, license or liquidation;

(iv) Take possession of the Pledged Collateral or any part thereof, by directing any Pledgor in writing to deliver the same to the Collateral Agent at any place or places so designated by the Collateral Agent, in which event such Pledgor shall at its own expense: (A) forthwith cause the same to be moved to the place or places designated by the Collateral Agent and therewith delivered to the Collateral Agent, (B) store and keep any Pledged Collateral so delivered to the Collateral Agent at such place or places pending further action by the Collateral Agent and (C) while the Pledged Collateral shall be so stored and kept, provide such security and maintenance services as shall be necessary to protect the same and to preserve and maintain them in good and marketable condition. Each Pledgor's obligation to deliver the Pledged Collateral as contemplated in this Section 8.1(iv) is of the essence hereof. Upon application to a court of equity having jurisdiction, the Collateral Agent shall be entitled to decree requiring specific performance by any Pledgor of such obligation;

(v) Withdraw all moneys, instruments, securities and other property in any bank, financial securities, deposit or other account of any Pledgor constituting Pledged Collateral (other than Pledged Collateral consisting of Accounts owed or owing by Medicare/Medicaid Account Debtors to any Pledgor, absent a court order or compliance with applicable Legal Requirements);

(vi) To the extent permitted under Section 5.2(ii)(B), retain and apply the Distributions to the Secured Obligations as provided in Article IX hereof;

(vii) Exercise any and all rights as beneficial and legal owner of the Pledged Collateral, including perfecting assignment of and exercising any and all voting, consensual and other rights and powers with respect to any Pledged Collateral (other than Pledged Collateral consisting of Accounts owed or owing by Medicare/Medicaid Account Debtors to any Pledgor, absent a court order or compliance with applicable Legal Requirements);

(viii) (A) Seek to obtain the consent of the applicable Medicare/Medicaid Account Debtor(s) to recognize and permit the enforcement of, (B) comply with applicable Health Care Laws necessary for the recognition and enforcement of, or (C) seek to obtain an Order from a court of competent jurisdiction recognizing and permitting the enforcement of, the collateral assignment or security interest and Lien of the Collateral Agent pursuant to the Security Documents in and to all Accounts and other Pledged Collateral payable by Medicaid/Medicare Account Debtors; and

(ix) All the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Pledged Collateral) (other than with respect to any Pledged Collateral consisting of Accounts owed or owing by Medicare/Medicaid Account Debtors to any Pledgor, absent a court order or compliance with applicable Legal Requirements), and the Collateral Agent may also in its sole discretion, without notice except as specified in Section 8.2, sell, assign, transfer or grant a license to use the Pledged Collateral or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board

or at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable. The Collateral Agent or any other Secured Party or any of their respective Affiliates may be the purchaser, licensee, assignee or recipient of any or all of the Pledged Collateral at any such sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Pledged Collateral sold, assigned or licensed at such sale, to use and apply any of the Secured Obligations owed to such person as a credit on account of the purchase price of any Pledged Collateral payable by such person at such sale. Each purchaser, assignee, licensee or recipient at any such sale shall acquire the property sold, assigned or licensed absolutely free from any claim or right on the part of any Pledgor, and each Pledgor hereby waives, to the fullest extent permitted by applicable Legal Requirements, all rights of redemption, stay and/or appraisal that it now has or may at any time in the future have under any Legal Requirement now existing or hereafter enacted. The Collateral Agent shall not be obligated to make any sale of Pledged Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Pledgor hereby waives, to the fullest extent permitted by applicable Legal Requirements, any claims against the Collateral Agent arising by reason of the fact that the price at which any Pledged Collateral may have been sold, assigned or licensed at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Pledged Collateral to more than one offeree.

SECTION 8.2 Notice of Sale. Each Pledgor acknowledges and agrees that, to the extent notice of sale or other disposition of Pledged Collateral shall be required by any Legal Requirement, 10 days prior notice to such Pledgor of the time and place of any public sale or of the time after which any private sale or other intended disposition is to take place shall be commercially reasonable notification of such matters unless the Pledged Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market (in which case no such prior notice shall be required). No notification need be given to any Pledgor if it has signed, after the occurrence of an Event of Default, a statement renouncing or modifying any right to notification of sale or other intended disposition.

SECTION 8.3 Waiver of Notice and Claims; Other Waivers; Marshalling.

(i) Each Pledgor hereby waives, to the fullest extent permitted by applicable Legal Requirements, notice of judicial hearing in connection with the Collateral Agent's taking possession or the Collateral Agent's disposition of any of the Pledged Collateral, including any and all prior notice and hearing for any prejudgment remedy or remedies and any such right which such Pledgor would otherwise have under any Legal Requirement, and each Pledgor hereby further waives, to the fullest extent permitted by applicable Legal Requirements (i) all damages occasioned by such taking of possession, (ii) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of the Collateral Agent's rights hereunder and (iii) all rights of redemption, appraisal, valuation, stay, extension or moratorium now or hereafter in force under any applicable Legal Requirements. The Collateral Agent shall not be liable for any incorrect or improper payment made pursuant to this Article VIII except to the extent resulting solely from the Collateral Agent's gross negligence or

willful misconduct as finally judicially determined by a court of competent jurisdiction. Any sale of, or the grant of options to purchase, or any other realization upon, any Pledged Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the applicable Pledgor therein and thereto, and shall be a perpetual bar both at law and in equity or otherwise against such Pledgor and against any and all persons claiming or attempting to claim the Pledged Collateral so sold, optioned or realized upon, or any part thereof, from, through or under such Pledgor.

(ii) To the maximum extent permitted by applicable Legal Requirements, each Pledgor hereby waives demand, notice, protest, notice of acceptance of this Agreement, notice of Credit Extensions, Pledged Collateral received or delivered or any other action taken in reliance hereon and all other demands and notices of any description.

(iii) The Collateral Agent shall not be required to marshal any present or future collateral security (including the Pledged Collateral) for, or other assurances of payment of, the Secured Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order. To the maximum extent permitted by applicable Legal Requirements, (A) each Pledgor hereby agrees that it will not invoke any Legal Requirement relating to the marshalling of collateral and (B) hereby irrevocably waives the benefits of all such Legal Requirements.

(iv) To the maximum extent permitted by applicable Legal Requirements, each Pledgor hereby waives any and all defenses and counterclaims it may have or could interpose in any such action or procedure brought by the Collateral Agent or any other Secured Party to obtain an Order recognizing, and permitting the enforcement of, the collateral assignment or security interest and Lien of the Collateral Agent pursuant to the Security Documents in and to any Account or other Pledged Collateral and acknowledges that the Collateral Agent and/or the Secured Parties may (i) seek to obtain the consent of the applicable Medicare/Medicaid Account Debtor(s) to recognize, (ii) comply with any Legal Requirements necessary for the recognition of, or (iii) seek to obtain an Order recognizing, the collateral assignment or security interest and Lien of the Collateral Agent pursuant to the Security Documents in and to all Accounts and other Pledged Collateral payable by Medicare/Medicaid Account Debtors.

SECTION 8.4 Standards for Exercising Rights and Remedies. To the extent that applicable Legal Requirements impose duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, each Pledgor acknowledges and agrees that it is not commercially unreasonable for the Collateral Agent, in the exercise of such remedies in accordance with all other terms hereof, (i) to fail to incur expenses reasonably deemed significant by the Collateral Agent to prepare Pledged Collateral for disposition or otherwise to fail to complete raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Pledged Collateral to be disposed of, or to obtain or, if not required by other Legal Requirements, to fail to obtain consents for Governmental Authorities or third parties for the collection or disposition of Pledged Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against account debtors or other persons obligated on Pledged Collateral or to fail to remove liens or encumbrances on or any adverse claims against Pledged Collateral, (iv) to exercise

collection remedies against account debtors and other persons obligated on Pledged Collateral directly or through the use of collection agencies and other collection specialists, subject to their compliance with applicable Legal Requirements, (v) to advertise dispositions of Pledged Collateral through publications or media of general circulation, whether or not the Pledged Collateral is of a specialized nature, (vi) to contact other persons, whether or not in the same business as any Pledgor, for expressions of interest in acquiring all or any portion of the Pledged Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Pledged Collateral, whether or not the collateral is of a specialized nature, (viii) to dispose of Pledged Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Pledged Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim or modify disposition warranties, (xi) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of Pledged Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of Pledged Collateral, or (xii) to the extent deemed appropriate by the Collateral Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Collateral Agent in the collection or disposition of any of the Pledged Collateral. The Pledgors acknowledge that the purpose of this Section 8.4 is to provide non-exhaustive indications of what actions or omissions by the Collateral Agent would fulfill the Collateral Agent's duties under the UCC or other Legal Requirement of the State or any other relevant jurisdiction in the Collateral Agent's exercise of remedies against the Pledged Collateral and that other actions or omissions by the Collateral Agent shall not be deemed to fail to fulfill such duties solely on account of not being indicated in this Section 8.4. Without limiting the foregoing, nothing contained in this Section 8.4 shall be construed to grant any rights to any Pledgor or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Agreement or by applicable Legal Requirements in the absence of this Section 8.4.

SECTION 8.5 Certain Sales of Pledged Collateral.

(i) Each Pledgor recognizes that, by reason of certain prohibitions contained in Legal Requirements, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Pledged Collateral, to limit purchasers to those who meet the requirements of a Governmental Authority. Each Pledgor acknowledges that any such sales may be at prices and on terms less favorable to the Collateral Agent than those obtainable through a public sale without such restrictions, and, notwithstanding such circumstances, agrees that any such restricted sale shall be deemed to have been made in a commercially reasonable manner and that, except as may be required by applicable Legal Requirements, the Collateral Agent shall have no obligation to engage in public sales.

(ii) Each Pledgor recognizes that, by reason of certain prohibitions contained in the Securities Act of 1933, as amended (the "Securities Act"), and applicable state securities' laws, the Collateral Agent may be compelled, with respect to any sale or disposition of all or any part of the Securities Collateral and Investment Property, to limit purchasers to persons who will agree, among other things, to acquire such Securities Collateral or Investment Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Pledgor acknowledges that any such private sales may be at prices and on terms

less favorable to the Collateral Agent than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act), and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Collateral Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Securities Collateral or Investment Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would agree to do so.

(iii) Notwithstanding the foregoing, each Pledgor shall, upon the occurrence and during the continuing of any Event of Default, at the request of the Collateral Agent, for the benefit of the Collateral Agent and the Secured Parties, cause any registration, qualification under or compliance with any federal or state securities law or laws to be effected with respect to all or any part of the Securities Collateral as soon as practicable and at the sole cost and expense of the Pledgors. Each Pledgor will cause such registration to be effected (and be kept effective) and cause such qualification and compliance to be effected (and be kept effective) as may be so requested and as would permit or facilitate the sale and distribution of such Securities Collateral including registration under the Securities Act (or any similar statute then in effect), appropriate qualifications under applicable blue sky or other state securities laws and appropriate compliance with all other requirements of any Governmental Authority. Each Pledgor shall cause the Collateral Agent to be kept advised in writing as to the progress of each such registration, qualification or compliance and as to the completion thereof, shall furnish to the Collateral Agent such number of prospectuses, offering circulars or other documents incident thereto as the Collateral Agent from time to time may request, and shall indemnify and shall cause the issuer of the Securities Collateral to indemnify the Collateral Agent against all claims, losses, damages and liabilities caused by any untrue statement (or alleged untrue statement) of a material fact contained therein (or in any related registration statement, notification or the like) or by any omission (or alleged omission) to state therein (or in any related registration statement, notification or the like) a material fact required to be stated therein or necessary to make the statements therein not materially misleading.

(iv) If the Collateral Agent determines to exercise its right to sell any or all of the Securities Collateral or Investment Property, upon written request, the applicable Pledgor shall, and shall cause each issuer of Securities Collateral and Investment Property to be sold hereunder to, from time to time furnish to the Collateral Agent all such information as the Collateral Agent may reasonably request in order to determine the number and nature or interest, of securities or other instruments included in the Securities Collateral or Investment Property which may be sold by the Collateral Agent as exempt transactions under the Securities Act and the rules of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

(v) Each Pledgor further agrees that a breach of any of the covenants contained in this Section 8.5 will cause irreparable injury to the Collateral Agent and other Secured Parties, that the Collateral Agent and the other Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 8.5 shall be specifically enforceable against such Pledgor, and such Pledgor hereby

waives and agrees not to assert any defenses against an action for specific performance of such covenants.

SECTION 8.6 No Waiver; Cumulative Remedies.

(i) No failure on the part of the Collateral Agent to exercise, no course of dealing with respect to, and no delay on the part of the Collateral Agent in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy; nor shall the Collateral Agent be required to look first to, enforce or exhaust any other security, collateral or guaranties. The remedies herein provided are cumulative and are not exclusive of any remedies provided by applicable Legal Requirements, in equity or otherwise.

(ii) In the event that the Collateral Agent shall have instituted any proceeding to enforce any right, power or remedy under this Agreement by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Collateral Agent, then and in every such case, the Pledgors, the Collateral Agent and each other Secured Party shall be restored to their respective former positions and rights hereunder with respect to the Pledged Collateral, and all rights, remedies and powers of the Collateral Agent and the other Secured Parties shall continue as if no such proceeding had been instituted.

SECTION 8.7 Certain Additional Actions Regarding Intellectual Property. If any Event of Default shall have occurred and be continuing, upon the written demand of the Collateral Agent, each Pledgor shall execute and deliver to the Collateral Agent an assignment or assignments of the registered Intellectual Property Collateral or such other documents as are necessary or appropriate to carry out the intent and purposes hereof; *provided, however*, that if the Event of Default is no longer continuing, the Collateral Agent shall promptly execute and deliver to each Pledgor such reassignments or other documents necessary to place such Pledgors in control and ownership of such Intellectual Property Collateral.

ARTICLE IX

PROCEEDS OF CASUALTY EVENTS AND COLLATERAL DISPOSITIONS;
APPLICATION OF PROCEEDS

SECTION 9.1 Proceeds of Casualty Events and Collateral Dispositions. The Pledgors shall take all actions required by the Credit Agreement with respect to any Net Cash Proceeds of any Casualty Event or from the sale or disposition of any Pledged Collateral.

SECTION 9.2 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, together with any other sums then held by the Collateral Agent pursuant to this Agreement, in accordance with the Credit Agreement.

ARTICLE X
MISCELLANEOUS

SECTION 10.1 Concerning Collateral Agent.

(i) The Collateral Agent has been appointed as Collateral Agent pursuant to the Credit Agreement. The actions of the Collateral Agent hereunder are subject to the provisions of the Credit Agreement. The Collateral Agent shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking action (including the release or substitution of the Pledged Collateral), in accordance with this Agreement and the Credit Agreement. Each Secured Party, by its acceptance of the benefits hereof, agrees that it shall have no right individually to realize upon any of the Pledged Collateral hereunder, it being understood and agreed by such Secured Party that all rights and remedies hereunder may be exercised solely by the Collateral Agent for the benefit of the Secured Parties in accordance with the terms of this Agreement. The Collateral Agent may employ agents and attorneys-in-fact in connection herewith and shall not be liable for the negligence or misconduct of any such agents or attorneys-in-fact selected by it in good faith, excepting therefrom, however, their gross negligence or willful misconduct. The Collateral Manager shall be deemed an agent of the Collateral Agent for the purposes of giving effect to this Agreement and the other Loan Documents and the Collateral Agent shall not be liable, under any circumstances, for the negligence (including gross negligence) or misconduct (including willful misconduct) of the Collateral Manager. The Collateral Agent may resign and a successor Collateral Agent may be appointed in the manner provided in the Credit Agreement. Upon the acceptance of any appointment as the Collateral Agent by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent under this Agreement, and the retiring Collateral Agent shall thereupon be discharged from its duties and obligations under this Agreement. After any retiring Collateral Agent's resignation, the provisions hereof shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was the Collateral Agent.

(ii) Except for the exercise of reasonable care in the custody of any Pledged Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Pledged Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Pledged Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Pledged Collateral in its possession if such Pledged Collateral is accorded treatment substantially equivalent to that which the Collateral Agent, in its individual capacity, accords its own property consisting of similar instruments or interests; *provided* that neither the Collateral Agent nor any of the other Secured Parties nor any of their respective directors, officers, employees or agents shall have responsibility for (x) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Securities Collateral, whether or not the Collateral Agent or any other Secured Party has or is deemed to have knowledge of such matters (y) failing to demand, collect or realize upon all or any part of the Pledged Collateral or for any delay in doing so or (z) failing to

take any necessary steps to preserve rights against any person with respect to any Pledged Collateral.

(iii) The Collateral Agent shall be entitled to rely upon any written notice, statement, certificate, order or other document or any telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper person, and, with respect to all matters pertaining to this Agreement and its duties hereunder, upon advice of counsel selected by it.

(iv) If any item of Pledged Collateral also constitutes collateral granted to the Collateral Agent under any other deed of trust, mortgage, security agreement, pledge or instrument of any type, in the event of any conflict between the provisions hereof and the provisions of such other deed of trust, mortgage, security agreement, pledge or instrument of any type in respect of such collateral, the Collateral Agent, in its sole discretion, shall select which provision or provisions shall control.

SECTION 10.2 Collateral Agent May Perform; Collateral Agent Appointed Attorney-in-Fact. If any Pledgor shall fail to perform any covenants contained in this Agreement (including such Pledgor's covenants to (i) pay the premiums in respect of all required insurance policies hereunder, (ii) pay Charges, (iii) make repairs or (iv) discharge Liens or pay or perform any obligations of such Pledgor under any Pledged Collateral) or if any representation or warranty on the part of any Pledgor contained herein shall be breached, the Collateral Agent may (but shall not be obligated to), at the Pledgors' expense, do the same or cause it to be done or remedy any such breach, and may expend funds for such purpose; *provided, however*, that the Collateral Agent shall in no event be bound to inquire into the validity of any tax, lien, imposition or other obligation which such Pledgor fails to pay or perform as and when required hereby and which such Pledgor does not contest in accordance with the provisions of Section 4.12. Any and all amounts so expended by the Collateral Agent shall be paid by the Pledgors in accordance with the provisions of Section 11.03 of the Credit Agreement. Neither the provisions of this Section 10.2 nor any action taken by the Collateral Agent pursuant to the provisions of this Section 10.2 shall prevent any such failure to observe any covenant contained in this Agreement nor any breach of representation or warranty from constituting an Event of Default. Each Pledgor hereby appoints the Collateral Agent its attorney-in-fact, with full authority in the place and stead of such Pledgor and in the name of such Pledgor, or otherwise, from time to time in the Collateral Agent's reasonable discretion to take any action and to execute any instrument consistent with the terms of the Credit Agreement, this Agreement and the other Loan Documents which the Collateral Agent reasonably may deem necessary or advisable to accomplish the purposes hereof. The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term hereof. Each Pledgor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

SECTION 10.3 Continuing Security Interest; Assignment. This Agreement created and shall continue in the same force and effect a continuing security interest in the Pledged Collateral in favor of the Collateral Agent for the ratable benefit of the Secured Parties and shall (i) be binding upon the Pledgors, their respective successors and assigns and (ii) inure, together with the rights and remedies of the Collateral Agent hereunder, to the benefit of the Collateral Agent and the other Secured Parties and each of their respective successors, transferees and

assigns. No other persons (including any other creditor of any Pledgor) shall have any interest herein or any right or benefit with respect hereto (except for Permitted Liens). Without limiting the generality of the foregoing clause (ii), any Secured Party may assign or otherwise transfer any obligations held by it and secured by this Agreement to any other person, and such other person shall thereupon become vested with all the benefits in respect thereof granted to such Secured Party, herein or otherwise, subject however, to the provisions of the Credit Agreement and any Hedging Agreement.

SECTION 10.4 Termination; Release. This Agreement shall terminate and the Pledged Collateral shall be released from the Lien of this Agreement when 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 (other than contingent indemnification obligations that, pursuant to the provisions of the Credit Agreement of the Security Documents, survive the termination thereof) and all Letters of Credit have been canceled or have expired and all amounts drawn thereunder have been reimbursed in full. Upon termination hereof, the security interests granted hereby shall terminate and all rights to the Pledged Collateral shall revert to the applicable Pledgor or to such other person as may be entitled thereto pursuant to any Order or other applicable Legal Requirement. Upon termination hereof or any release of Pledged Collateral in accordance with the provisions of the Credit Agreement, the Collateral Agent shall promptly (and in any event within 10 Business Days), upon the written request and at the sole cost and expense of the Pledgors, assign, transfer and deliver to the Pledgors, against receipt and without recourse to or warranty by the Collateral Agent, except that the Collateral Agent has not assigned or otherwise transferred its security interest in the Pledged Collateral, such of the Pledged Collateral to be released (in the case of a release) as may be in possession or control of the Collateral Agent and as shall not have been sold or otherwise applied pursuant to the terms hereof and the other Transaction Documents, and, with respect to any other Pledged Collateral, proper documents and instruments (including UCC-3 termination statements or releases) acknowledging the termination hereof or the release of such Pledged Collateral, as the case may be. If at any time any payment (in whole or in part) of any Secured Obligations is invalidated, declared to be fraudulent or preferential, set aside, rescinded or must otherwise be restored by any Secured Party, this Agreement shall continue to be effective or be reinstated, as the case may be, all as though such payment had not been made.

SECTION 10.5 Modification in Writing. No amendment, modification, supplement, termination or waiver of or to any provision hereof, nor consent to any departure by any Pledgor therefrom, shall be effective unless the same shall be made in accordance with the terms of the Credit Agreement and unless in writing and signed by the Collateral Agent. Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by any Pledgor from the terms of any provision hereof shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Agreement, no notice to or demand on any Pledgor in any case shall entitle any Pledgor to any other or further notice or demand in similar or other circumstances.

SECTION 10.6 Notices. Unless otherwise provided herein or in the Credit Agreement, any notice or other communication herein required or permitted to be given shall be

delivered to such addresses and given in the manner and become effective as set forth in the Credit Agreement.

SECTION 10.7 Governing Law, Consent to Jurisdiction and Service of Process; Waiver of Jury Trial.

(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.

(b) EACH PLEDGOR 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 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 LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR OTHERWISE SHALL AFFECT ANY RIGHT THAT THE COLLATERAL AGENT, ANY OTHER AGENT, THE ISSUING BANK OR ANY LENDER OR OTHER SECURED PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY PLEDGOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) EACH PLEDGOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SECTION 10.7(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.

(d) 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 TELECOPY) IN SECTION 10.6. 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.

(e) EACH PARTY HERETO HEREBY 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 THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, THE TRANSACTIONS OR THE OTHER TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER 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 10.7.

SECTION 10.8 Severability of Provisions. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 10.9 Execution in Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 10.10 Business Days. In the event any time period or any date provided in this Agreement ends or falls on a day other than a Business Day, then such time period shall be deemed to end and such date shall be deemed to fall on the next succeeding Business Day, and performance herein may be made on such Business Day, with the same force and effect as if made on such other day.

SECTION 10.11 Waiver of Stay. Each Pledgor covenants that in the event that such Pledgor or any property or assets of such Pledgor shall hereafter become the subject of a voluntary or involuntary proceeding under the Bankruptcy Code or such Pledgor shall otherwise be a party to any federal or state bankruptcy, insolvency, moratorium or similar proceeding to which the provisions relating to the automatic stay under Section 362 of the Bankruptcy Code or any similar provision in any such Legal Requirement is applicable, then, in any such case, whether or not the Collateral Agent has commenced foreclosure proceedings under this Agreement, such Pledgor shall not, and each Pledgor hereby expressly waives its right to (to the extent it may lawfully do so) at any time insist upon, plead or in any whatsoever, claim or take the benefit or advantage of any such automatic stay or such similar provision as it relates to the

exercise of any of the rights and remedies (including any foreclosure proceedings) available to the Collateral Agent as provided in this Agreement, in any other Security Document or any other document evidencing the Secured Obligations. Each Pledgor further covenants that it will not hinder, delay or impede the execution of any power granted herein to the Collateral Agent, but will suffer and permit the execution of every such power as though no law relating to any stay or similar provision had been enacted.

SECTION 10.12 No Credit for Payment of Taxes or Imposition. No Pledgor shall be entitled to any credit against the principal, premium, if any, or interest payable under the Credit Agreement, and such Pledgor shall not be entitled to any credit against any other sums which may become payable under the terms thereof or hereof, by reason of the payment of any Tax on the Pledged Collateral or any part thereof.

SECTION 10.13 No Claims Against Collateral Agent. Nothing contained in this Agreement shall constitute any consent or request by the Collateral Agent, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Pledged Collateral or any part thereof, nor as giving any Pledgor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against the Collateral Agent in respect thereof or any claim that any Lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the Lien hereof.

SECTION 10.14 No Release. Nothing set forth in this Agreement shall relieve any Pledgor from the performance of any term, covenant, condition or agreement on such Pledgor's part to be performed or observed under or in respect of any of the Pledged Collateral or from any liability to any person under or in respect of any of the Pledged Collateral or shall impose any obligation on the Collateral Agent or any other Secured Party to perform or observe any such term, covenant, condition or agreement on such Pledgor's part to be so performed or observed or shall impose any liability on the Collateral Agent or any other Secured Party for any act or omission on the part of such Pledgor relating thereto or for any breach of any representation or warranty on the part of such Pledgor contained in this Agreement, the Credit Agreement or the other Loan Documents, or under or in respect of the Pledged Collateral or made in connection herewith or therewith. The obligations of each Pledgor contained in this Section 10.14 shall survive the termination hereof and the discharge of such Pledgor's other obligations under this Agreement, the Credit Agreement and the other Loan Documents (other than contingent indemnification obligations that, pursuant to the provisions of the Credit Agreement or the Security Documents, survive the termination thereof).

SECTION 10.15 Overdue Amounts. Until paid, all amounts due and payable under this Agreement shall constitute Secured Obligations and shall bear interest, whether before or after judgment, at the Default Rate. Nothing in this Section 10.15 shall affect the Default Rate or the circumstances in which the Default Rate is payable pursuant to the Credit Agreement.

SECTION 10.16 Obligations Absolute. All obligations of each Pledgor hereunder shall be absolute and unconditional irrespective of:

(i) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any Pledgor;

(ii) any lack of validity or enforceability of any Loan Document, or any other agreement or instrument relating thereto against any Pledgor;

(iii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured 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;

(iv) any pledge, exchange, release or non-perfection or loss of priority of any other collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Secured Obligations;

(v) any exercise, non-exercise or waiver of any right, remedy, power or privilege under or in respect hereof, or any Loan Document; or

(vi) any other circumstances which might otherwise constitute a waiveable defense available to, or a discharge of, any Pledgor.

SECTION 10.17 Amendment and Restatement. On the date hereof, the Original Security Agreement is hereby amended, restated and superseded in its entirety by this Agreement. The parties hereto acknowledge and agree that (i) this Agreement and the other Loan Documents executed and delivered in connection herewith do not constitute a novation, payment and reborrowing, or termination of the "Obligations" (as defined in the Credit Agreement) or the "Secured Obligations" under the Original Security Agreement or any of the other Loan Documents; (ii) such "Obligations" and "Secured Obligations" are in all respects continuing (as amended and restated on the date hereof by this Agreement and by the Credit Agreement) and (iii) the security interests and Liens granted under the Original Security Agreement and the other Loan Documents are in all respects continuing and in full force and effect and are hereby fully ratified and affirmed in favor of the Collateral Agent for the benefit of the Secured Parties. Without limitation of the foregoing, each of the Pledgors hereby fully and unconditionally ratifies and affirms this Agreement and agrees that all security interests and Liens granted hereunder and under the Original Security Agreement shall from and after the date hereof secure all Secured Obligations hereunder and under the other Loan Documents.

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IN WITNESS WHEREOF, the Pledgors and the Collateral Agent have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written.

BIOSCRIP, INC., as Pledgor

By: /s/ Barry A. Posner

Name: Barry A. Posner

Title: Executive Vice President, Secretary and General Counsel

EACH GUARANTOR SET FORTH ON ANNEX A,
as Pledgors

By: /s/ Barry A. Posner

Name: Barry A. Posner

Title: Executive Vice President, Secretary and General Counsel

Signature Page to Amended and Restated Security Agreement

HEALTHCARE FINANCE GROUP, LLC,
as Collateral Agent

By: /s/ John D. Calabro
Name: John D. Calabro
Title: Executive Vice President

Signature Page to Amended and Restated Security Agreement

FINANCING STATEMENTS AND INTELLECTUAL PROPERTY REGISTRATIONS

Type of Filings	Entity	Jurisdictions
UCC3 Assignment	BioScrip, Inc.	Delaware
UCC3 Assignment	BioScrip Infusion Services, Inc.	California
UCC3 Assignment	Chronimed, LLC	Minnesota
UCC3 Assignment	BioScrip Pharmacy, Inc.	Minnesota
UCC3 Assignment	BioScrip Pharmacy (NY), Inc.	New York
UCC3 Assignment	BioScrip PBM Services, LLC	Delaware
UCC3 Assignment	Natural Living Inc.	New York
UCC3 Assignment	BioScrip Infusion Services, LLC	Delaware
UCC3 Assignment	BioScrip Nursing Services, LLC	New York
UCC3 Assignment	BioScrip Infusion Management, LLC	Delaware
UCC3 Assignment	BioScrip Pharmacy Services, Inc.	Ohio
UCC3 Assignment	CHS Holdings, Inc.	Delaware
UCC3 Assignment	Applied Health Care, LLC	Delaware
UCC3 Assignment	Cedar Creek Home Health Care Agency, Inc.	Tennessee
UCC3 Assignment	Critical Homecare Solutions, Inc.	Delaware
UCC3 Assignment	Deaconess Enterprises, LLC	Ohio
UCC3 Assignment	Deaconess HomeCare, LLC	Delaware
UCC3 Assignment	East Goshen Pharmacy, Inc.	Pennsylvania
UCC3 Assignment	Elk Valley Health Services, Inc.	Tennessee
UCC3 Assignment	Elk Valley Home Health Care Agency, Inc.	Tennessee
UCC3 Assignment	Elk Valley Professional Affiliates, Inc.	Tennessee
UCC3 Assignment	Gericare, Inc.	Tennessee
UCC3 Assignment	Infusion Partners, LLC	Ohio
UCC3 Assignment	Infusion Partners of Brunswick, LLC	Georgia
UCC3 Assignment	Infusion Partners of Melbourne, LLC	Georgia
UCC3 Assignment	Infusion Solutions, Inc.	New Hampshire
UCC3 Assignment	Knoxville Home Therapies, LLC	Tennessee

Schedule 1 to Amended and Restated Security Agreement

<u>Type of Filings</u>	<u>Entity</u>	<u>Jurisdictions</u>
UCC3 Assignment	National Health Infusion, Inc.	Florida
UCC3 Assignment	New England Home Therapies, Inc.	Massachusetts
UCC3 Assignment	Option Health, Ltd.	Illinois
UCC3 Assignment	Professional Homecare Services, Inc.	Delaware
UCC3 Assignment	Regional Ambulatory Diagnostics, Inc.	Ohio
UCC3 Assignment	Scott-Wilson, Inc.	Kentucky
UCC3 Assignment	Scott Mississippi Home Health, Inc.	Mississippi
UCC3 Assignment	South Mississippi Home Health, Inc. — Region I	Mississippi
UCC3 Assignment	South Mississippi Home Health, Inc. — Region II	Mississippi
UCC3 Assignment	South Mississippi Home Health, Inc. — Region III	Mississippi
UCC3 Assignment	Specialty Pharma, Inc.	Delaware
UCC3 Assignment	Wilcox Medical, Inc.	Vermont
UCC3 Assignment	Bradhurst Specialty Pharmacy, Inc.	New York
IP Assignment	BioScrip, Inc. Infusion Solutions, Inc. Critical Homecare Solutions, Inc. Infusion Partners, LLC (formerly Infusion Partners, Inc.) South Mississippi Home Health, Inc. New England Home Therapies, Inc. Wilcox Medical, Inc.	United States Patent and Trademark Office
	(with respect to security interest recorded on reel/frames 004184/0280, 0289, 0298 and 0315)	

[Form of]

ISSUER'S ACKNOWLEDGMENT

The undersigned hereby (i) acknowledges receipt of a copy of that certain Amended and Restated Security Agreement, dated as of December 28, 2010 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement"; capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Security Agreement), made by BioScrip, Inc., a Delaware corporation, and the other Pledgors party thereto in favor of Healthcare Finance Group, LLC, as Collateral Agent (in such capacity and together with any successors in such capacity, the "Collateral Agent"), (ii) agrees promptly to note on its books the security interests granted to the Collateral Agent and confirmed under the Security Agreement, (iii) agrees that it will comply with instructions of the Collateral Agent or its nominee with respect to the applicable Securities Collateral without further consent by the applicable Pledgor, (iv) agrees that the "issuer's jurisdiction" (as defined in Section 8-110 of the UCC) is the State of New York, U.S.A., (v) agrees to notify the Collateral Agent upon obtaining knowledge of any interest in favor of any person in the applicable Securities Collateral that is adverse to the interest of the Collateral Agent therein and (vi) waives any right or requirement at any time hereafter to receive a copy of the Security Agreement in connection with the registration of any Securities Collateral thereunder in the name of the Collateral Agent or its nominee or the exercise of voting rights by the Collateral Agent or its nominee.

[NAME OF ISSUER]

By: _____
Name:
Title:

Issuer's Acknowledgment

[Form of]

SECURITIES PLEDGE AMENDMENT

This security pledge amendment, dated as of [_____, 20__] (the "Pledge Amendment"), is delivered pursuant to Section 5.1 of that certain Amended and Restated Security Agreement, dated as of December 28, 2010 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement"; capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Security Agreement), made by BioScrip, Inc., a Delaware corporation, and the other Pledgors party thereto in favor of Healthcare Finance Group, LLC, as collateral agent (in such capacity and together with any successors in such capacity, the "Collateral Agent"). The undersigned hereby agrees that this Pledge Amendment may be attached to the Security Agreement and that the Pledged Securities and/or Intercompany Notes listed on this Pledge Amendment shall be deemed to be and shall become part of the Pledged Collateral and shall secure all Secured Obligations.

[_____]

By: _____
Name:
Title:

AGREED TO AND ACCEPTED:

HEALTHCARE FINANCE GROUP, LLC,
as Collateral Agent

By: _____
Name:
Title:

PLEDGED SECURITIES

<u>ISSUER</u>	<u>CLASS OF STOCK OR INTERESTS</u>	<u>PAR VALUE</u>	<u>CERTIFICATE NO(S).</u>	<u>NUMBER OF SHARES OR INTERESTS</u>	<u>PERCENTAGE OF ALL ISSUED CAPITAL OR OTHER EQUITY INTERESTS OF ISSUER</u>
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INTERCOMPANY NOTES

<u>ISSUER</u>	<u>PRINCIPAL AMOUNT</u>	<u>DATE OF ISSUANCE</u>	<u>INTEREST RATE</u>	<u>MATURITY DATE</u>
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[Form of]
JOINDER AGREEMENT

[Name of New Pledgor]
[Address of New Pledgor]

[Date]

Ladies and Gentlemen:

Reference is made to that certain Amended and Restated Security Agreement, dated as of December 28, 2010 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement;" capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Security Agreement), made by BioScrip, Inc., a Delaware corporation, and the other Pledgors party thereto in favor of Healthcare Finance Group, LLC, as collateral agent (in such capacity and together with any successors in such capacity, the "Collateral Agent").

This joinder agreement supplements the Security Agreement and is delivered by the undersigned, [_____] (the "New Pledgor"), pursuant to Section 3.5 of the Security Agreement. The New Pledgor hereby agrees to be bound as a Guarantor and as a Pledgor by all of the terms, covenants and conditions set forth in the Security Agreement to the same extent that it would have been bound if it had been a signatory to the Security Agreement on the execution date of the Security Agreement. The New Pledgor also hereby agrees to be bound as a party by all of the terms, covenants and conditions applicable to it set forth in the Credit Agreement to the same extent that it would have been bound if it had been a signatory to the Credit Agreement on the execution date of the Credit Agreement. Without limiting the generality of the foregoing, the New Pledgor hereby grants and pledges to the Collateral Agent, as collateral security for the full, prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Secured Obligations, a Lien on and security interest in, all of its right, title and interest in, to and under the Pledged Collateral and expressly assumes all obligations and liabilities of a Guarantor under the Credit Agreement and a Pledgor under the Security Agreement. The New Pledgor hereby makes each of the representations and warranties and agrees to each of the covenants applicable to (i) the Pledgors contained in the Security Agreement and the other Loan Documents and (ii) the Guarantors under the Credit Agreement and the other Loan Documents.

Annexed hereto are supplements to each of the Schedules to the Security Agreement and the Credit Agreement, as applicable, with respect to the New Pledgor. Such supplements shall be deemed to be part of the Security Agreement or the Credit Agreement, as applicable.

This joinder agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts together shall constitute one and the same agreement. Delivery of an executed counterpart of this joinder agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this joinder agreement.

THIS JOINDER AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CHOICE OF LAW THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION.

IN WITNESS WHEREOF, the New Pledgor has caused this joinder agreement to be executed and delivered by its duly authorized officer as of the date first above written.

[NEW PLEDGOR]

By: _____
Name: _____
Title: _____

AGREED TO AND ACCEPTED:

HEALTHCARE FINANCE GROUP, LLC,
as Collateral Agent

By: _____
Name: _____
Title: _____

[Schedules to be attached]

[Form of]

COPYRIGHT SECURITY AGREEMENT

This copyright security agreement (this "Copyright Security Agreement"), dated as of [_____, 20__], by [_____] (the "Pledgors"), in favor of Healthcare Finance Group, LLC, in its capacity as collateral agent (in such capacity, the "Collateral Agent") pursuant to that certain Amended and Restated Credit Agreement, dated as of December 28, 2010 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement").

WITNESSETH:

WHEREAS, Pledgors are party to that certain Amended and Restated Security Agreement of even date with the Credit Agreement (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement") in favor of the Collateral Agent pursuant to which the Pledgors are required to execute and deliver this Copyright Security Agreement;

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent, for the ratable benefit of the Secured Parties, to enter into the Credit Agreement, the Pledgors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Copyright Collateral. Each Pledgor hereby pledges and grants to the Collateral Agent for the ratable benefit of the Secured Parties a lien on and security interest in and to all of its right, title and interest in, to and under all the following Pledged Collateral of such Pledgor (collectively, the "Copyright Collateral"):

- (a) Copyrights of such Pledgor listed on Schedule 1¹ attached hereto; and
- (b) all Proceeds of any and all of the foregoing (other than Excluded Property).

SECTION 3. Security Agreement. The security interest granted pursuant to this Copyright Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent for the benefit of the Secured Parties pursuant to the Security Agreement, and the Pledgors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Copyright Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of

1. List the Copyrights identified in the Perfection Certificate.

this Copyright Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control unless the Collateral Agent shall otherwise determine.

SECTION 4. Termination. Upon the full payment and performance of the Secured Obligations (other than contingent indemnification obligations that, pursuant to the provisions of the Credit Agreement or the Security Documents, survive the termination thereof), and upon written request of the Pledgors, the Collateral Agent shall execute, acknowledge, and deliver to the Pledgors an instrument in writing in recordable form releasing the collateral pledge, grant, assignment, lien and security interest in the Copyrights under this Copyright Security Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, each Pledgor has caused this Copyright Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[PLEDGORS]

By: _____
Name:
Title:

HEALTHCARE FINANCE GROUP, LLC,
as Collateral Agent

By: _____
Name:
Title:

SCHEDULE 1
to
COPYRIGHT SECURITY AGREEMENT
COPYRIGHT REGISTRATIONS AND COPYRIGHT APPLICATIONS

Copyright Registrations:

OWNER	REGISTRATION NUMBER	TITLE
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Copyright Applications:

OWNER	APPLICATION NUMBER	TITLE
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SCHEDULE 1 to Copyright Security Agreement

[Form of]

PATENT SECURITY AGREEMENT

This patent security agreement (this "Patent Security Agreement"), dated as of [_____, 20__], by [_____] (the "Pledgors"), in favor of Healthcare Finance Group, LLC, in its capacity as collateral agent (in such capacity, the "Collateral Agent") pursuant to that certain Amended and Restated Credit Agreement, dated as of December 28, 2010 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement").

WITNESSETH:

WHEREAS, the Pledgors are party to that certain Amended and Restated Security Agreement of even date with the Credit Agreement (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement") in favor of the Collateral Agent pursuant to which the Pledgors are required to execute and deliver this Patent Security Agreement;

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent, for the ratable benefit of the Secured Parties, to enter into the Credit Agreement, the Pledgors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Patent Collateral. Each Pledgor hereby pledges and grants to the Collateral Agent for the ratable benefit of the Secured Parties a lien on and security interest in and to all of its right, title and interest in, to and under all the following Pledged Collateral of such Pledgor (collectively, the "Patent Collateral");

- (a) Patents of such Pledgor listed on Schedule 1² attached hereto; and
- (b) all Proceeds of any and all of the foregoing (other than Excluded Property)

SECTION 3. Security Agreement. The security interest granted pursuant to this Patent Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent for the benefit of the Secured Parties pursuant to the Security Agreement, and the Pledgors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Patent Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Patent Security

² List the Patents identified in the Perfection Schedule.

Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control unless the Collateral Agent shall otherwise determine.

SECTION 4. Termination. Upon the full payment and performance of the Secured Obligations (other than contingent indemnification obligations that, pursuant to the provisions of the Credit Agreement or the Security Documents, survive the termination thereof) and upon written request of the Pledgors, the Collateral Agent shall execute, acknowledge, and deliver to the Pledgors an instrument in writing in recordable form releasing the collateral pledge, grant, assignment, lien and security interest in the Patents under this Patent Security Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, each Pledgor has caused this Patent Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[PLEDGORS]

By: _____
Name:
Title:

Accepted and Agreed:

HEALTHCARE FINANCE GROUP, LLC,
as Collateral Agent

By: _____
Name:
Title:

SCHEDULE 1
to
PATENT SECURITY AGREEMENT
ISSUED PATENTS AND APPLICATIONS

Issued Patents:

<u>OWNER</u>	<u>REGISTRATION NUMBER</u>	<u>TITLE</u>
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Patent Applications:

<u>OWNER</u>	<u>APPLICATION NUMBER</u>	<u>TITLE</u>
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SCHEDULE 2 to Patent Security Agreement

[Form of]

TRADEMARK SECURITY AGREEMENT

This trademark security agreement (this "Trademark Security Agreement"), dated as of [_____, 20__], by [_____] (the "Pledgors"), in favor of Healthcare Finance Group, LLC, in its capacity as collateral agent (in such capacity, the "Collateral Agent") pursuant to that certain Amended and Restated Credit agreement, dated as of December 28, 2010 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement").

WITNESSETH:

WHEREAS, the Pledgors are party to that certain Amended and Restated Security Agreement of even date with the Credit Agreement (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement") in favor of the Collateral Agent pursuant to which the Pledgors are required to execute and deliver this Trademark Security Agreement;

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent, for the ratable benefit of the Secured Parties, to enter into the Credit Agreement, the Pledgors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meaning given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Trademark Collateral. Each Pledgor hereby pledges and grants to the Collateral Agent for the ratable benefit of the Secured Parties a lien on and security interest in and to all of its right, title and interest in, to and under all the following Pledged Collateral of such Pledgor (collectively, the "Trademark Collateral"):

- (a) Trademarks of such Pledgor listed on Schedule 1¹ attached hereto;
- (b) all Goodwill associated with such Trademarks; and
- (c) all Proceeds of any and all of the foregoing (other than Excluded Property).

SECTION 3. Security Agreement. The security interest granted pursuant to this Trademark Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent for the benefit of the Secured Parties pursuant to the Security Agreement, and the Pledgors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Trademark Collateral made and granted hereby are

¹ List the Trademarks identified in the Perfection Certificate.

more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Trademark Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control unless the Collateral Agent shall otherwise determine.

SECTION 4. Termination. Upon the full payment and performance of the Secured Obligations (other than contingent indemnification obligations that, pursuant to the provisions of the Credit Agreement or the Security Documents, survive the termination thereof), upon written request of the Borrower, the Collateral Agent shall execute, acknowledge, and deliver to the Pledgors an instrument in writing in recordable form releasing the collateral pledge, grant, assignment, lien and security interest in the Trademarks under this Trademark Security Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, each Pledgor has caused this Trademark Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[PLEDGORS]

By: _____
Name:
Title:

Accepted and Agreed:

HEALTHCARE FINANCE GROUP, LLC,
as Collateral Agent

By: _____
Name:
Title:

SCHEDULE 1
to
TRADEMARK SECURITY AGREEMENT
TRADEMARK REGISTRATIONS AND APPLICATIONS

Trademark Registrations:

<u>OWNER</u>	<u>REGISTRATION NUMBER</u>	<u>TITLE</u>
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Trademark Applications:

<u>OWNER</u>	<u>APPLICATION NUMBER</u>	<u>TITLE</u>
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**AMENDED AND RESTATED
COLLATERAL MANAGEMENT AGREEMENT**

By

**BIOSCRIP, INC.,
as Borrower,**

and

THE LOAN PARTIES PARTY HERETO

and

**HEALTHCARE FINANCE GROUP LLC
as Collateral Manager,
as Administrative Agent and Collateral Agent,**

Dated as of March 25, 2010

as

**Amended and Restated
as of December 28, 2010**

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AMENDED AND RESTATED COLLATERAL MANAGEMENT AGREEMENT, dated as of March 25, 2010 and as AMENDED AND RESTATED as of December 28, 2010 (as so Amended and Restated and as it may be further amended, supplemented or otherwise modified from time to time in accordance with its terms, the "Collateral Management Agreement"), among BIOSCRIP INC., a Delaware corporation (the "Borrower"), the other Loan Parties from time to time party hereto by execution of this Agreement or otherwise by execution of a Joinder Agreement, HEALTHCARE FINANCE GROUP, LLC ("HFG"), in its capacity as administrative agent and collateral agent for the Secured Parties, as successor to Jefferies Finance LLC in such capacities (in such capacities, the "Agent"), and in its capacity as collateral manager for the Secured Parties (in such capacity, the "Collateral Manager").

R E C I T A L S:

A. Borrower, the subsidiaries of Borrower party thereto, Agent, the Collateral Manager, the lending institutions from time to time party thereto as lenders (the "Lenders") and other entities party thereto have entered into that certain credit agreement, dated as of March 25, 2010, as such credit agreement is being Amended and Restated in its entirety as of the date hereof pursuant to the terms of an amended and restated credit agreement (as so amended and restated and as further amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"). Terms not otherwise defined herein shall have the meanings set forth in the Credit Agreement or, if not defined therein, in the Security Agreement.

B. Borrower, the other Loan Parties, the Agent and the Collateral Manager entered into this Collateral Management Agreement (as in effect immediately prior to the Restatement Date, the "Existing CMA") to provide for, among other things, certain matters with respect to the Collateral.

C. Borrower and the other Loan Parties have received and will continue to receive substantial benefits from the execution, delivery and performance of the Secured Obligations under the Credit Agreement and the other Loan Documents and are, therefore, willing to enter into this Agreement to amend and restate the Existing CMA in the manner set forth herein.

D. This Agreement is given by each Loan Party in favor of the Collateral Agent and Collateral Manager for the benefit of the Secured Parties to secure the payment and performance of all of the Secured Obligations and each of the Collateral Agent and the Collateral Manager agrees to act, on the terms and conditions set forth herein and in the other Loan Documents, for the benefit of the Secured Parties.

E. It is a condition to the obligations of the Lenders to make the Loans under the Credit Agreement and a condition to the Issuing Bank issuing Letters of Credit under the Credit Agreement that the Borrower, each other Loan Party, the Collateral Manager and the Agent execute and deliver the applicable Loan Documents, including this Agreement.

Accordingly, the Borrower, each other Loan Party, the Agent and the Collateral Manager each agrees to AMEND AND RESTATE the Existing CMA on the Restatement Date in its entirety as follows:

ARTICLE I.
COLLATERAL MANAGER FEES, INDEMNITIES AND AUTHORIZATIONS

Section 1.01 Indemnities. Each of the Loan Parties hereby agrees to indemnify and hold harmless the Collateral Manager and its respective Affiliates (together with their respective directors, officers, agents, representatives, shareholders, lenders, counsel and employees, each an "Indemnified Party"), from and against any and all losses, claims, damages, costs, expenses (including reasonable counsel fees and disbursements) and liabilities which are actually incurred by such Indemnified Party arising out of this Collateral Management Agreement, the amendment and restatement hereof, or the financings contemplated under the Loan Documents, the Collateral (including, without limitation, the use thereof by any of such Persons or any other Person, the exercise by the Collateral Manager of rights and remedies or any power of attorney hereunder, and any action or inaction of the Collateral Manager hereunder and in accordance with any Loan Document), the use of proceeds of any financial accommodations provided hereunder, any investigation, litigation or other proceeding (brought or threatened) relating thereto, or the role of any such Person or Persons in connection with the foregoing, whether or not any Indemnified Party is named as a party to any legal action or proceeding ("Claims"). No Loan Party will be responsible to any Indemnified Party hereunder for any Claims to the extent that a court having jurisdiction shall have determined by a final nonappealable judgment that any such Claim shall have arisen out of or resulted directly and principally from (i)(1) actions taken or omitted to be taken by such Indemnified Party by reason of the bad faith, willful misconduct or gross negligence of any Indemnified Party, or (2) in violation of any law or regulation applicable to such Indemnified Party (except to the extent that such violation is attributable to any breach of any representation, warranty or agreement by or on behalf of the Loan Parties or any of their designees, in each case, as determined by a final nonappealable decision of a court of competent jurisdiction), or (ii) a successful claim by any Loan Party against such Indemnified Party ("Excluded Claims"). The Indemnified Party shall give the Borrower prompt written notice of any Claim setting forth a description of those elements of the Claim of which such Indemnified Party has knowledge. The Collateral Manager, as an Indemnified Party, shall be permitted hereunder to select counsel to defend such Claim with the consent of the Borrower, such consent not to be unreasonably withheld, at the expense of the Borrower and, if such Indemnified Party shall decide to do so, then all such Indemnified Parties shall select the same counsel to defend such Indemnified Parties with respect to such Claim; *provided*, however, that if any such Indemnified Party shall in its reasonable opinion consider that the retention of one *joint* counsel as aforesaid shall result in a conflict of interest, such Indemnified Party may, at the expense of the Borrower, select its own counsel to defend such Indemnified Party with respect to such Claim. The Indemnified Parties and the Borrower and their respective counsel shall cooperate with each other in all reasonable respects in any investigation, trial and defense of any such Claim and any appeal arising therefrom.

Section 1.02 Telephonic Notice. Without in any way limiting the Borrower's obligation to confirm in writing any telephonic notice, the Collateral Manager may act without liability upon the basis of telephonic notice believed by the Collateral Manager in good faith to be from an Financial Officer of the Borrower prior to receipt of written confirmation.

ARTICLE II.

GENERAL PAYMENT MECHANICS; GOVERNMENTAL ENTITIES PAYMENT MECHANICS; MISDIRECTED PAYMENTS

Section 2.01 General Payment Mechanics. (a) On or prior to the Restatement Date, each of the Borrower, each other applicable Loan Party, the Collateral Manager (for the benefit of the Secured Parties) and each Lockbox Bank shall have entered into the Depositary Agreements and shall have caused the Lockbox Banks to establish the Lender Lockboxes and the Lender Lockbox Accounts.

(b) Each Loan Party shall prepare, execute and deliver (or shall have prepared, executed and delivered) to each non-Governmental Entity who is or is proposed to be a payor of Receivables and that has not previously received such Notice or is not sending payments to a Lender Lockbox or Lender Lockbox Account in the manner required hereunder, with copies to the Collateral Manager, on or prior to the Restatement Date, a Notice to Obligors addressed to each such non-Governmental Entity, which Notice to Obligors shall state that all present and future Receivables owing to such Loan Party are subject to a Lien in favor of the Collateral Agent (for the benefit of the Secured Parties) and that all checks from such non-Governmental Entity on account of Receivables shall be sent to a Lender Lockbox and all wire transfers from such non-Governmental Entity on account of Receivables shall be wired directly into a Lender Lockbox Account.

(c) Each Loan Party represents, covenants and agrees that, on and after the Closing Date, all invoices (and, if provided by a Loan Party, return envelopes) sent or to be sent to non-Governmental Entities shall set forth only the address of a Lender Lockbox as a return address for payment of Receivables, and only a Lender Lockbox Account with respect to wire transfers for payment of Receivables. Each Loan Party hereby further covenants and agrees to instruct and notify each of the members of its accounting and collections staff to provide identical information in communications with non-Governmental Entities with respect to Collections.

Section 2.02 Governmental Entities Payment Mechanics. (a) On or prior to the Restatement Date, each Loan Party, the Collateral Manager (for the benefit of the Secured Parties) and each Lockbox Bank shall have entered into the Depositary Agreements, and Loan Party shall have caused the Lockbox Banks to establish the Borrower Lockboxes and the Borrower Lockbox Accounts. Each Loan Party shall prepare, execute and deliver (or shall have prepared, executed and delivered) to each Governmental Entity or its fiscal intermediary who is or is proposed to be an Obligor of Receivables and that has not previously received such Notice or is not sending payments to a Borrower Lockboxes or a Borrower Lockbox Account in the manner required hereunder, with copies to the Collateral Manager, on or prior to the Restatement Date, Notices to Governmental Entities, which Notices to Governmental Entities shall provide that all checks from Governmental Entities on account of Receivables shall be sent to a Borrower Lockbox and all wire transfers on account of Receivables shall be wired directly into a Borrower Lockbox Account.

(b) Each Loan Party represents, covenants and agrees that, on and after the Closing Date, all invoices sent to be sent to Governmental Entities (and, if provided by a Loan

Party, return envelopes) shall set forth only the address of a Borrower Lockbox as a return address for payment of Receivables, and only a Borrower Lockbox Account with respect to wire transfers for payment of Receivables. Each Loan Party further covenants and agrees to instruct and notify each of the members of its accounting and collections staff to provide identical information in communications with Governmental Entities with respect to Collections.

(c) Each Loan Party shall maintain its Borrower Lockbox Accounts exclusively for the receipt of payments on account of Receivables from Governmental Entities. Each Loan Party shall take all actions necessary to ensure that no payments from any Person other than a Governmental Entity shall be deposited in the Borrower Lockbox Accounts.

Section 2.03 Misdirected Payments; EOB's. (a) In the event that any Loan Party receives a Misdirected Payment in the form of a check, such Loan Party shall immediately send such Misdirected Payment, in the form received by such Loan Party, by overnight delivery service to the appropriate Lender Lockbox or Borrower Lockbox, as the case may be, together with the envelope in which such payment was received. In the event a Loan Party receives a Misdirected Payment in the form of cash or wire transfer, such Loan Party shall immediately wire transfer the amount of such Misdirected Payment directly to a Lender Lockbox Account. All Misdirected Payments shall be sent promptly upon receipt thereof, and in no event later than the close of business, on the first Business Day after receipt thereof.

(b) Each Loan Party hereby agrees and consents to the Agent and/or the Collateral Manager taking such actions, solely during the continuation of an Event of Default, as are reasonably necessary to ensure that future payments from the Obligor of a Misdirected Payment shall be made in accordance with the Notice previously delivered to such Obligor, including, without limitation, to the maximum extent permitted by law, (i) the Agent, the Collateral Manager, their respective assigns or designees executing on such Loan Party's behalf and delivering to such Obligor a new Notice, and (ii) Agent, the Collateral Manager, their respective assigns or designees contacting such Obligor by telephone to confirm the instructions previously set forth in the Notice to such Obligor. At any time, upon the Collateral Manager's request, a Borrower shall promptly (and in any event, within two Business Days from such request) take such similar actions as the Collateral Manager may request.

Section 2.04 No Rights of Withdrawal. No member of the Loan Parties shall have any rights of direction or withdrawal with respect to amounts held in the Lender Lockbox Accounts.

ARTICLE III. COLLECTION AND DISTRIBUTION

Section 3.01 Collections on the Receivables. The Collateral Agent and Collateral Manager (in each case, for the benefit of the Secured Parties) shall be entitled with respect to all Receivables, (i) to receive and to hold as collateral all Receivables and all Collections on Receivables in accordance with the terms of the Depository Agreements, and (ii) to have and to exercise any and all rights to collect, record, track and, during the continuance of an Event of Default, take all actions to obtain Collections with respect to all Receivables.

Section 3.02 Distribution of Funds. On each date of any Credit Extension (including the initial Credit Extension) (each such date, a “Funding Date”), and provided, that (i) no Event of Default has occurred and is then continuing and the Final Maturity Date has not occurred, and (ii) the Collateral Manager shall have received all Receivable Information for the period since the immediately prior Funding Date, the Collateral Agent and Collateral Manager shall distribute any and all Collections received in the Collection Account prior to 12:00 p.m. (New York City time) on the immediately prior Funding Date as follows: *first*, to the Administrative Agent for distribution to the applicable Secured Parties, an amount in cash equal to the amount, if any, of fees or interest that is due and payable and has not otherwise been paid in full by the Borrower and the other Loan Parties under the Loan Documents, until such amount has been paid in full; *second*, to the Administrative Agent for distribution to the applicable Lenders, an amount in cash equal to the Borrowing Base Deficiency, if any, until such amount is paid in full, in accordance with Section 2.09(b) of the Credit Agreement; *third*, to the Administrative Agent for distribution, on a pro rata basis, (x) to the applicable Lenders, an amount in cash equal to the payment, if any, of principal on the Loans due and payable on such Funding Date, (y) to the Issuing Bank, any reimbursements due under Section 2.18(e) of the Credit Agreement, and (z) to the Swingline Lender, any amounts due in repayment of the Swingline Loan pursuant to Section 2.04(a)(ii) of the Credit Agreement, until such amount has been paid in full; *fourth*, to the Administrative Agent for distribution to the applicable Secured Parties, an amount in cash equal to the payment of any other Obligations due and payable on such Funding Date, if any, until such amount has been paid in full, and fifth, to the Borrower on behalf of the Borrower and its Subsidiaries, all remaining amounts of Collections, as requested.

Section 3.03 Distribution of Funds at the Maturity Date or Upon an Event of Default. At the Final Maturity Date or upon the occurrence and during the continuance of an Event of Default, subject to the rights and remedies of the Agent and Collateral Manager pursuant to Section 4.02 hereof, the Collateral Agent and Collateral Manager (for the benefit of the Secured Parties) shall distribute any and all Collections in accordance with the Credit Agreement.

Section 3.04 Allocation of Servicing Responsibilities. (a) Tracking of Collections and other transactions pertaining to the Receivables shall be administered by the Collateral Manager (for the benefit of Secured Parties) in a manner consistent with the terms of this Collateral Management Agreement. The responsibilities of the Loan Parties to the Collateral Manager have been set forth in Exhibit V attached hereto. The Loan Parties shall cooperate fully with the Collateral Manager in establishing and maintaining the Transmission of the Receivable Information, including, without limitation, the matters described in Exhibit V, and shall provide promptly to the Collateral Manager such other information necessary or desirable for the administration of Collections on the Receivables as may be reasonably requested from time to time.

(b) The Borrower hereby agrees to perform the administration and servicing obligations set forth in Exhibit V hereto with respect to its Receivables (the “Servicing Responsibilities”). The Collateral Manager may, at any time following the occurrence of an Event of Default (and shall, without requirement of notice to any party, upon an Event of Default resulting from the events described in paragraphs (g) or (h) of Section 8.01 of the Credit Agreement) appoint another Person, for the benefit of the Secured Parties, to succeed the Borrower in the performance of the Servicing Responsibilities (which replacement shall be

effectuated through the outplacement to a third-party collection firm obligated to use commercially reasonable efforts to maximize collections in accordance with the provisions of Article 9 of the UCC).

Section 3.05 Distributions to the Loan Parties Generally. Distributions to the Loan Parties on each Business Day shall be deposited in the Borrower Account.

Section 3.06 Collateral Manager. The Collateral Manager has been appointed as Collateral Manager pursuant to the Credit Agreement and this Agreement. The actions of the Collateral Manager hereunder are subject to the provisions of the Credit Agreement and the other Loan Documents. The Collateral Manager shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking action, in accordance with this Agreement and the Credit Agreement, for the benefit of the Secured Parties. The Collateral Manager may employ agents and attorneys-in-fact in connection herewith and shall not be liable for the negligence or misconduct of any such agents or attorneys-in-fact selected by it in good faith, excepting therefrom, however, their gross negligence or willful misconduct. Without limiting the foregoing, the Collateral Manager shall be deemed an agent of the Collateral Agent for the purposes of giving effect to the Security Documents (including this Agreement) and the other Loan Documents and the Collateral Agent shall not be liable for the negligence or misconduct of the Collateral Manager.

ARTICLE IV.
REPRESENTATIONS AND WARRANTIES; COVENANTS;
REMEDIES

Section 4.01 Representations and Warranties; Covenants. Each Loan Party makes on the Restatement Date and on each subsequent Funding Date, the representations and warranties set forth in the Credit Agreement, and hereby agrees to perform and observe the covenants set forth in the Credit Agreement.

Section 4.02 Remedies; Right of Set-Off. Each Loan Party hereby irrevocably authorizes and instructs the Agent and the Collateral Manager to set-off the full amount of any Obligations due and payable against (i) any Collections, or (ii) the principal amount of any Loans requested on or after such due date. No further notification, act or consent of any nature whatsoever is required prior to the right of the Agent or the Collateral Manager to exercise such right of set-off; *provided, however*, the Collateral Manager shall promptly notify the Borrower (with a copy to the Agent): (1) a set-off pursuant to this Section 4.02 occurred, (2) the amount of such set-off and (3) a description of the Obligations that was due and payable.

Section 4.03 Attorney-in-Fact. Each Loan Party hereby irrevocably designates and appoints the Collateral Manager (for the benefit of the Secured Parties), to the extent permitted by applicable law and regulation, as each Loan Party's attorneys-in-fact, which irrevocable power of attorney is coupled with an interest, with authority, upon the continuance of an Event of Default (and to the extent not prohibited under applicable law and regulations) to (i) endorse or sign such Loan Party's name to financing statements, remittances, invoices, assignments, checks, drafts, or other instruments or documents in respect of the Collateral, including the Receivables, (ii) notify Obligors to make payments on the Receivables directly to the Agent or Collateral

Manager, and (iii) bring suit in such Loan Party's name and settle or compromise such Receivables as the Collateral Manager may, in its discretion, deem appropriate.

ARTICLE V.
MISCELLANEOUS

Section 5.01 Amendments, etc. No amendment, supplement, modification or waiver of any provision of this Collateral Management Agreement or consent to any departure therefrom by a party hereto shall be effective unless in a writing signed by the Agent, the Collateral Manager and the Borrower and then such amendment, supplement, modification waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of the Agent or the Collateral Manager to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

Section 5.02 Notices, etc. All notices and other communications hereunder shall, unless otherwise stated herein, be in writing (which may include facsimile and email communication) and shall delivered to such addresses and in such manner, and deemed delivered, as set forth in the Credit Agreement.

Section 5.03 Assignability. This Collateral Management Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

Section 5.04 Further Assurances. Each Loan Party shall, at its cost and expense, upon the reasonable request of the Collateral Manager, duly execute and deliver, or cause to be duly executed and delivered, to the Collateral Manager such further instruments and do and cause to be done such further acts as may be necessary or proper in the reasonable opinion of the Collateral Manager to carry out more effectively the provisions and purposes of this Collateral Management Agreement.

Section 5.05 Costs and Expenses; Collection Costs. (a) Each of the Loan Parties, jointly and severally, agrees to pay (i) on the Restatement Date and (ii) with respect to costs and expenses incurred thereafter, within seven days of invoicing therefor and after reasonable verification by the Borrower of such costs and expenses, which shall in no event exceed such seven-day period, all reasonable costs and expenses in connection with the preparation, execution and delivery of this Collateral Management Agreement and the amendment and restatement hereof and any waiver, modification, supplement or amendment hereto, including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Collateral Manager and all costs and expenses, if any (including reasonable counsel fees and expenses), of the Collateral Manager and its Affiliates in connection with the waiver, supplement, modification, amendment and enforcement of this Collateral Management Agreement.

(b) Each of the Loan Parties, jointly and severally, further agree to pay on the Restatement Date (and with respect to costs and expenses incurred following the Restatement Date, within seven days of invoicing therefor) (i) all reasonable costs and expenses incurred by

the Collateral Manager in connection with (x) semi-annual audits of the Receivables, collections with respect thereto and Inventory, and the books and records with respect to the foregoing, (y) all audits conducted in connection with any material change in the Receivables or a change in the Credit and Collection Policy (z) and all audits conducted during the continuance of an Event of Default, (ii) all reasonable costs and expenses incurred by the Collateral Manager to accommodate any significant coding or data system changes necessitated by the Loan Parties that would affect the transmission or interpretation of data received through the interface, and (iii) all reasonable costs and expenses incurred by the Collateral Manager for additional time and material expenses of the Collateral Manager resulting from a lack of either cooperation or responsiveness of any Loan Party to agreed-upon protocol and schedules with the Collateral Manager; *provided*, that the Borrower has been informed of the alleged lack of cooperation or responsiveness and has been provided the opportunity to correct such problems.

(c) In the event that the Agent or the Collateral Manager shall retain an attorney or attorneys to collect, enforce, protect, maintain, preserve or foreclose its interests with respect to this Collateral Management Agreement, any other Loan Documents, any Obligations, any Receivable or the Lien on any Collateral or any other security for the Obligations or under any instrument or document delivered pursuant to this Collateral Management Agreement, or in connection with any Obligations, the Loan Parties shall jointly and severally pay all of the reasonable costs and expenses of such collection, enforcement, protection, maintenance, preservation or foreclosure, including reasonable attorneys' fees, which amounts shall be part of the Obligations, and the Agent and the Collateral Manager may take judgment for all such amounts. The attorneys' fees arising from such services, including those of any appellate proceedings, and all reasonable out-of-pocket expenses, charges, costs and other fees incurred by such counsel in any way or with respect to or arising out of or in connection with or relating to any of the events or actions described in this Section 5.05 shall be payable by the Loan Parties, on an a joint and several basis, to the Agent and/or the Collateral Manager, as the case may be, on demand (with interest accruing from the eighth day following the date of such demand, and shall be additional obligations under this Collateral Management Agreement). Without limiting the generality of the foregoing, such expenses, costs, charges and fees may include: recording costs, appraisal costs, paralegal fees, costs and expenses; accountants' fees, costs and expenses; court costs and expenses; photocopying and duplicating expenses; court reporter fees, costs and expenses; long distance telephone charges; air express charges; telegram charges; telecopier charges; secretarial overtime charges; and expenses for travel, lodging and food paid or incurred in connection with the performance of such legal services; *provided* that, as between the Agent and the Collateral Manager, the Collateral Manager agrees that it will only take legal action in the enforcement of this Collateral Management Agreement at the direction of the Agent.

Section 5.06 Term. (a) This Collateral Management Agreement shall remain in full force and effect during the term (including any renewal term and any restatement) of the Credit Agreement.

(b) The termination of this Collateral Management Agreement shall not affect any rights of the Agent or Collateral Manager or any obligations of the Loan Parties arising on or prior to the effective date of such termination, and the provisions hereof shall continue to be fully operative until all Obligations incurred on or prior to such termination has been paid and performed in full.

Section 5.07 Joint and Several Liability. Each Loan Party agrees that (i) they shall be jointly and severally liable for the obligations, duties and covenants of each other under this Collateral Management Agreement and the acts and omissions of each other, and (ii) they jointly and severally makes each representation and warranty for itself and each other under this Collateral Management Agreement. Notwithstanding the foregoing, if, in any action to enforce the Obligations against any Loan Party or any proceeding to allow or adjudicate a claim hereunder, a court of competent jurisdiction determines that enforcement of the joint and several obligations of the Loan Parties against a Borrower for the full amount of the Obligations is not lawful under, or would be subject to avoidance under Section 548 of the United States Bankruptcy Code or any applicable provision of Federal or state law, the liability of such Loan Party hereunder shall be limited to the maximum amount lawful and not subject to avoidance under such law.

Section 5.08 Entire Agreement; Severability. (a) This Collateral Management Agreement, including all exhibits and schedules hereto and the documents referred to herein, embody the entire agreement and understanding of the parties concerning the subject matter contained herein.

(b) If any provision of this Collateral Management Agreement shall be declared invalid or unenforceable, the parties hereto agree that the remaining provisions of this Collateral Management Agreement shall continue in full force and effect.

Section 5.09 GOVERNING LAW. THIS COLLATERAL MANAGEMENT AGREEMENT SHALL, IN ACCORDANCE WITH SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD CALL FOR THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION, EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF THE SECURITY INTEREST GRANTED HEREUNDER, OR REMEDIES RELATED THERETO, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK.

Section 5.10 WAIVER OF JURY TRIAL, JURISDICTION AND VENUE. EACH OF THE PARTIES HERETO HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY IN THE EVENT OF ANY LITIGATION WITH RESPECT TO ANY MATTER RELATED TO THIS COLLATERAL MANAGEMENT AGREEMENT, AND HEREBY IRREVOCABLY CONSENTS TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN NEW YORK COUNTY, NEW YORK CITY, NEW YORK IN CONNECTION WITH ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS COLLATERAL MANAGEMENT AGREEMENT. IN ANY SUCH LITIGATION, EACH OF THE PARTIES HERETO WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS AND AGREES THAT SERVICE THEREOF MAY BE MADE BY CERTIFIED OR REGISTERED MAIL DIRECTED TO THE PARTIES HERETO AT THEIR ADDRESSES SET FORTH ON THE SIGNATURE PAGE HEREOF.

Section 5.11 Execution in Counterparts. This Collateral Management Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Collateral Management Agreement by telecopy or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Collateral Management Agreement.

Section 5.12 Survival of Termination. All indemnities contained herein shall survive the termination hereof unless otherwise provided.

Section 5.13 Joinder of Additional Loan Parties. The Borrower shall cause each Loan Party which, from time to time, after the date hereof shall be required to pledge any assets to the Collateral Agent for the benefit of the Secured Parties pursuant to the Credit Agreement and the other Loan Documents, to execute and deliver to the Collateral Agent a Joinder Agreement within five Business Days after the date on which it was acquired or created, and become a Subsidiary and, in each case, upon such execution and delivery, such Subsidiary shall constitute a "Loan Party" for all purposes hereunder with the same force and effect as if originally named as a Loan Party herein. The execution and delivery of such Joinder Agreement shall not require the consent of any Loan Party hereunder. The rights and obligations of each Loan Party hereunder shall remain in full force and effect notwithstanding the addition of any new Loan Party as a party to this Agreement or any other Loan Document.

[remainder of page intentionally blank; signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers or other authorized signatories as of the day and year first above written.

BIOSCRIP, INC., as Borrower

By: /s/ Barry A. Posner
Name: Barry A. Posner
Title: Executive Vice President, Secretary and General Counsel

EACH SUBSIDIARY GUARANTOR SET FORTH ON ANNEX A

By: /s/ Barry A. Posner
Name: Barry A. Posner
Title: Executive Vice President, Secretary and General Counsel

[Amended and Restated Collateral Manager Agreement]

HEALTHCARE FINANCE GROUP, LLC, as Agent
and as Collateral Manager

By: /s/ John D. Calabro
Name: John D. Calabro
Title: Executive Vice President

[Amended and Restated Collateral Manager Agreement]

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.

DEFINITIONS

As used in this Collateral Management Agreement (including its Exhibits and Schedules), the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

“Borrower Account” shall mean initially account # 000009069730 at Bank of America, N.A., ABA # 011500010, or, thereafter, such other bank account designated by the Borrower by written notice to the Collateral Manager from time to time.

“Borrower Lockbox” shall mean the lockboxes set forth on Schedule III hereto to receive checks with respect to Receivables payable by Governmental Entities.

“Borrower Lockbox Account” shall mean the accounts set forth on Schedule III hereto in the name of each applicable Loan Party (or Loan Parties) and associated with the Borrower Lockbox established and controlled by each applicable Loan Party (or Loan Parties) to deposit Collections from Governmental Entities, including Collections received in the Borrower Lockbox and Collections received by wire transfer directly from Governmental Entities, all as more fully set forth in the Depositary Agreement.

“Collection Account” shall mean the Collateral Manager’s account maintained at Citibank, N.A., ABA # 021-000-089, Account #205779, Ref: A & T SF c/o HFG Healthco-4 LLC - Collection Account, or such other bank account designated by the Collateral Manager from time to time.

“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.

“Credit and Collection Policy” shall mean those receivables credit and collection policies and practices of the Loan Parties in effect on the date of this Collateral Management Agreement and attached as Schedule II hereto.

“Depositary Agreements” shall mean those certain Depositary Account Agreements, dated the date hereof, among the relevant members of the Loan Parties, the Collateral Manager, and each Lockbox Bank, in a form reasonably acceptable to the Collateral Manager, as such agreement may be amended, modified or supplemented from time to time in accordance with its terms.

“Governmental Entity” shall mean the United States of America, any state, any political subdivision of a state and any agency or instrumentality of the United States of America or any state or political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government. Payments from Governmental Entities shall be deemed to include payments governed under the Social Security

Act (42 U.S.C. §§ 1395 et seq.), including payments under Medicare, Medicaid and TRICARE/CHAMPUS, and payments administered or regulated by CMS.

“Indemnified Party” has the meaning set forth in Section 1.01.

“Insurer” means any Person (other than a Governmental Entity) which in the ordinary course of its business or activities agrees to pay for healthcare goods and services received by individuals, including commercial insurance companies, nonprofit insurance companies (such as the Blue Cross, Blue Shield entities), employers or unions which self insure for employee or member health insurance, prepaid health care organizations, preferred provider organizations, health maintenance organizations, commercial hospitals, physicians groups or any other similar Person. “Insurer” includes insurance companies issuing health, personal injury, workers’ compensation or other types of insurance but does not include any individual guarantor.

“Joinder Agreement” shall mean an agreement substantially in the form annexed hereto as Exhibit VII.

“Lender Lockbox” shall mean the lockboxes located at the address set forth on Schedule III to receive checks with respect to Receivables payable by Insurers.

“Lender Lockbox Account” shall mean the accounts at the Lockbox Bank as set forth on Schedule III as associated with the Lender Lockbox and established by the relevant members of the Loan Parties to deposit Collections, including Collections received in the Lender Lockbox and Collections received by wire transfer directly from Insurers, all as more fully set forth in the Depositary Agreement.

“Lockbox” shall mean either the Borrower Lockbox or the Lender Lockbox, as the context requires.

“Lockbox Account” shall mean either the Borrower Lockbox Account or the Lender Lockbox Account, each associated with the respective Lockbox to deposit Collections, including Collections received by wire transfer directly, all as more fully set forth in the Depositary Agreement.

“Lockbox Banks” shall mean each of Bank of America, N.A., Citibank, N.A. and People’s United Bank as lockbox bank under the applicable Depositary Agreement.

“Notice to Governmental Entities” shall mean a notice letter on a Borrower’s corporate letterhead in substantially the form attached hereto as Exhibit III.

“Notice to non-Governmental Entities” shall mean a notice letter on a Borrower’s corporate letterhead in substantially the form attached hereto as Exhibit IV.

“Notice to Obligor” shall mean either a Notice to Governmental Entities or a Notice to non-Governmental Entities, as the context requires.

“Obligor” shall mean each Person who is responsible for the payment of all or any portion of a Receivable.

Exhibit I-2

“Servicing Responsibilities” has the meaning set forth in Section 3.04 hereto.

“Transmission” shall mean, upon establishment of computer interface between the Borrower and the Collateral Manager in accordance with the specifications established by the Collateral Manager, the transmission of Receivable Information through computer interface to the Collateral Manager in a manner satisfactory to the Collateral Manager.

Exhibit I-3

RECEIVABLE INFORMATION

The following information shall, as appropriate, be provided by each Loan Party to the Collateral Manager with respect to each Receivable, together with such other information and in such form as may reasonably be requested from time to time by the Collateral Manager and as, in accordance with applicable law, may be disclosed or released to the Collateral Manager (the "Receivable Information"):

(i) Cash Receipts Report – Cash receipt transaction data containing:

- Transaction date
- Transaction number
- Customer number
- Cash receipt amount

(ii) Invoices Report – Invoice transaction data containing:

- Transaction date
- Transaction number
- Customer number
- Invoice amount

(iii) Adjustments Report – Adjustment transaction data containing:

- Transaction date
- Transaction number
- Customer number
- Amount of adjustment

FORM OF NOTICE TO GOVERNMENTAL ENTITIES

[Letterhead of the applicable Loan Party]

[Date]
[Name and Address
of Governmental Entity]

Re: Change of Account and Address [for Medicare Supplier No.]

To Whom it May Concern:

Please be advised that we have opened a new bank account at [*specified financial institution*] and a post-office box with respect to such bank account. Accordingly, effective immediately and until further notice, we hereby request that:

(1) All wire transfers be made directly into our account at:

[_____]

(2) All remittance advices and other forms of payment, including checks, be made to our post office box located at:

[_____]

As provided in the Medicare Carriers Manual § 3060.11, the undersigned hereby certifies that this payment arrangement will continue in effect only so long as the following requirements are met:

- a) [*specified financial institution*] does not provide financing to the undersigned nor acts on behalf of another party in connection with the provision of such financing; and
- b) The undersigned has sole control of the account, and [*specified financial institution*] is subject only to the instructions of the undersigned (or its agents) regarding the account.

Thank you for your cooperation in this matter.

Exhibit III-1

FORM OF NOTICE TO NON-GOVERNMENTAL ENTITIES

[Letterhead of the Applicable Loan Party]

[Date]
[Name and Address
of Obligor]

Re: Change of Account and Address

To Whom it May Concern:

We are pleased to announce that we have entered into a new long-term financing arrangements that will allow us to continue to provide you with new and innovative services and products. As part of this arrangement, we will be granting a security interest all of our existing and future receivables payable by you to us as collateral to our lenders. Accordingly, you are hereby directed to make:

(1) All wire transfers directly to the following account:

[_____]

(2) All remittance advices and other forms of payment, including checks, to the following address:

[_____]

[Please note that this is the same remittance name, address and account to which you currently send payment.]

The foregoing directions shall apply to all existing receivables payable to us and (until further written notice) to all receivables arising in the future and may not be revoked except by a writing executed by us and Healthcare Finance Group LLC, as collateral manager under our new financing facility.

Please acknowledge your receipt of this notice by signing the enclosed copy of this letter and returning it in the enclosed envelope.

Thank you for your cooperation in this matter.

Exhibit IV-1

SERVICING RESPONSIBILITIES

The Borrower on behalf of each Loan Party shall be responsible for the following administration and servicing obligations (the “Servicing Responsibilities”) which shall be performed by the Borrower until such time as a successor servicer shall be designated and shall accept appointment pursuant to Section 3.04(b) of this Collateral Management Agreement:

(a) Servicing Standards and Activities. The Borrower agrees to administer and service its Receivables (i) within the parameters of services set forth in paragraph (b) of this Exhibit V, as such parameters may be modified by mutual written agreement of the Collateral Manager and the Borrower, (ii) in compliance at all times with applicable law and with this Collateral Management Agreements, covenants, objectives, policies and procedures set forth in this Collateral Management Agreement, and (iii) in accordance with industry standards for servicing healthcare receivables unless such standards conflict with the procedures set forth in paragraph (b) of this Exhibit V in which case the provisions of paragraph (b) shall control. The Borrower shall establish and maintain electronic data processing services for monitoring, administering and collecting the Receivables in accordance with the foregoing standards and shall, within three Business Days of the deposit of any checks, other forms of cash deposits, or other written matter into a Lockbox, post such information to its electronic data processing services.

(b) Parameters of Primary Servicing. The Servicing Responsibilities shall be performed within the following parameters:

(i) Subject to the review and authority of the Collateral Manager and the Agent and except as otherwise provided herein, the Borrower shall have full power and authority to take all actions that it may deem necessary or desirable, consistent in all material respects with its existing policies and procedures with respect to the administration and servicing of accounts receivable, in connection with the administration and servicing of its Receivables. Without limiting the generality of the foregoing, the Borrower shall, in the performance of its servicing obligations hereunder, act in accordance with all legal requirements and subject to the terms and conditions of this Collateral Management Agreement.

(ii) During the continuance of an Event of Default, at the Collateral Manager’s request or the Agent’s request, all enforcement and collection proceedings with respect to the Receivables shall, unless prohibited by applicable law, be instituted and prosecuted in the name of the Collateral Agent.

(iii) No Borrower shall change in any material respect its existing policies and procedures with respect to the administration and servicing of accounts receivable (including, without limitation, the amount and timing of write-offs) without the prior written consent of the Collateral Manager (with contemporaneous written notice thereof (in reasonable detail) to the Agent).

(iv) The Borrower will be responsible for monitoring and collecting the Receivables, including, without limitation, contacting Obligor that have not made payment on their respective Receivables within the customary time period for such Obligor, and resubmitting any claim rejected by an Obligor due to incomplete information.

(v) If the Borrower determines that a payment with respect to a Receivable has been received directly by a pharmacy or any other Person, the Borrower shall promptly advise the Collateral Manager, and the Collateral Manager shall be entitled to presume that the reason such payment was made to such pharmacy or other Person was because of a breach of representation or warranty in this Collateral Management Agreement with respect to such Receivable (such as, by way of example, the forms related to such Receivable not being properly completed so as to provide for direct payment by the Obligor to the applicable Borrower), unless such Borrower shall demonstrate that such is not the case. In the case of any such Receivable which is determined not to be a Denied Receivable, the Borrower shall promptly demand that such pharmacy or other Person remit and return such funds. If such funds are not promptly received by the applicable Borrower, the Borrower shall take all reasonable steps to obtain such funds.

(vi) Notwithstanding anything to the contrary contained herein, no Borrower may amend, waive or otherwise permit or agree to any deviation from the terms or conditions of any Receivable in any material respect without the prior consent of the Collateral Manager.

(c) Termination of Servicing Responsibilities; Cooperation. Upon the occurrence of an Event of Default the Collateral Manager or Collateral Agent or the Agent may, by written notice, terminate the performance of the Servicing Responsibilities by the Borrower, in which event such Borrower shall immediately transfer to a successor servicer designated by the Collateral Manager or the Agent, as the case may be, all records, computer access and other information as shall be necessary or desirable, in the reasonable judgment of such successor servicer, to perform such responsibilities. The Borrower shall otherwise cooperate fully with such successor servicer.

INTERFACE WITH COLLATERAL MANAGER

1. The Collateral Manager will convey appropriate data requirements and instructions to the Borrower to establish a computer interface between each Loan Party's systems and the Collateral Manager's receivables monitoring system. The interface will permit the Collateral Manager to receive electronically each Loan Party's accounts receivable data, including the Receivable Information, billing data and collection and other transaction data relating to the Receivables.
2. The Loan Parties shall give the Collateral Manager at least ten Business Days' notice of any coding changes or electronic data processing system modifications made by such Borrower which could affect the Collateral Manager's processing or interpretation of data received through the interface.
3. The Collateral Manager shall have no responsibility to return to the Loan Parties any information which the Collateral Manager receives pursuant to the computer interface.
4. The Borrower, on behalf of the Loan Parties, will prepare weekly accounts receivable data files of all transaction types for such Borrower's sites that are included in the program. The weekly cutoff will occur at a predetermined time each week, and the weekly cutoff date for all of the sites must occur at exactly the same time. The cutoff date that will be selected will be at the end of business for a specific day of the week, or in other words, at the end of such Borrower's transaction posting process for that day. The Borrower will temporarily maintain a copy of the accounts data files in the event that the data is degraded or corrupted during transmission, and needs to be re-transmitted.
5. The Collateral Manager will be responsible for the management of the hardware, communications and software used in the program.
6. The Collateral Manager's data center will receive the Receivable files, and immediately confirm that the files have been passed without degradation or corruption of data by balancing the detailed items to the control totals that accompany the files. Any problems in this process will be immediately reported to the Borrower so that the Receivable file can be re-transmitted, if necessary.
7. Once the receipt of the Receivable data has been confirmed, the Collateral Manager will perform certain tests and edits to ensure that each Receivable meets the specified eligibility criteria. Compliance with concentration limits will be verified and the Collateral Manager will notify the Collateral Manager that the Eligible Receivables have been determined.
8. Each Loan Party's sites will continue to post daily transactions to their respective Receivable files. Each Loan Party's Receivable files for each of the eligible sites will include all transactions posted through that day. The Borrower will create a transaction report and a Receivable file for each of the eligible sites. The transaction report will contain all transactions posted to the respective site Receivable file for the specified period (and will indicate the

respective site and the number of items and total dollars on each transaction report for control purposes). The Receivable file will contain balances that reflect the transactions posted on the Loan Parties's systems through the end of business of the specified period.

9. The Borrower will transmit the billing, transaction, and the most current Receivable data files to the Collateral Manager's data center according to the established schedule. The Borrower should, again, maintain the backup of each of these files in the event that a re-transmission is necessary.

10. The Collateral Manager's data center will confirm that the files have been received intact, and will immediately communicate any problems to the Borrower in order to initiate a re-transmission. The Collateral Manager will then post the transaction files to the accounts receivable for accounts that the Collateral Manager is maintaining, and consequently update the affected balances. Upon completion of the posting process, the Collateral Manager will generate summary reports of the posting process that the Collateral Manager will use to complete various funding activities. The Collateral Manager summary reports will reference the Loan Parties's transaction codes and activity to codes that are common to the funding program.

11. The Collateral Manager will then compare the updated accounts balances on the Collateral Manager's system to the corresponding account balances reflected on the Receivable file. The Collateral Manager expects that the balances for the funded Receivables will be congruent, and any discrepancies will be immediately examined and resolved through the cooperative effort of the Collateral Manager and the Loan Parties. The Collateral Manager shall produce discrepancy reports (e.g., "Funding Only" or "Out of Balance" reports) and the Borrower shall respond promptly to such reports.

12. Once the reconciliation process has been completed and any discrepancies between the Collateral Manager and the Loan Parties's Receivable files resolved through the discrepancy report process described in paragraph 9 above, the Collateral Manager will then process the Receivable file and advise the Collateral Manager. The Collateral Manager will then proceed through exactly the same process described in paragraph 6 above.

Exhibit VI-2

[Form of]
JOINDER AGREEMENT

[Name of New Loan Party]
[Address of New Loan Party]

[Date]

Ladies and Gentlemen:

Reference is made to that certain Amended and Restated Collateral Management Agreement, dated as of March 25, 2010, as Amended and Restated as of December 28, 2010 (as so Amended and Restated, and as further amended, amended and restated, supplemented or otherwise modified from time to time, the "Collateral Management Agreement;" capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Collateral Management Agreement), made by BioScrip, Inc., a Delaware corporation, the other Loan Parties party thereto, HEALTHCARE FINANCE GROUP LLC, as collateral agent and administrative agent (in such capacities and together with any successors in such capacity, the "Agent") and as collateral manager for the Secured Parties (in such capacity, the "Collateral Manager").

This joinder agreement supplements the Collateral Management Agreement and is delivered by the undersigned, [_____] (the "New Loan Party"), pursuant to Section 5.13 of the Collateral Management Agreement. The New Loan Party hereby agrees to be bound as a Loan Party by all of the terms, covenants and conditions set forth in the Collateral Management Agreement to the same extent that it would have been bound if it had been a signatory to the Collateral Management Agreement on the execution date of the Collateral Management Agreement. The New Loan Party hereby makes each of the representations and warranties and agrees to each of the covenants applicable to the Loan Parties contained in the Collateral Management Agreement .

Annexed hereto are supplements to each of the Schedules to the Collateral Management Agreement, as applicable, with respect to the New Loan Party. Such supplements shall be deemed to be part of the Collateral Management Agreement.

Exhibit VII-1

This joinder agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts together shall constitute one and the same agreement.

THIS JOINDER AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CHOICE OF LAW THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION.

Exhibit VII-2

IN WITNESS WHEREOF, the New Loan Party has caused this Joinder Agreement to be executed and delivered by its duly authorized officer as of the date first above written.

[NEW LOAN PARTY]

By: _____
Name:
Title:

AGREED TO AND ACCEPTED:

HEALTHCARE FINANCE GROUP, LLC,
as Collateral Manager and as Collateral Agent

By: _____
Name:
Title:

[Schedules to be attached]

Exhibit VII-3



BioScrip Completes Debt Refinancing

ELMSFORD, N.Y., Dec 28, 2010 (BUSINESS WIRE) — BioScrip (NASDAQ: BIOS) today announced it has closed a new \$150.0 million syndicated revolving credit facility.

"The new facility provides us with better terms and financial flexibility which is an important first step in enabling us to reposition the Company and improve profitability," said Richard M. Smith, President and Chief Operating Officer of BioScrip. "This new facility provides us with greater borrowing power to support our future cash flow priorities."

The new facility will be structured as an amendment and restatement of the previous \$100.0 million term loan and \$50.0 million revolver. Healthcare Finance Group, the collateral manager of its refinanced credit facilities will be the primary lender and agent and will provide ongoing funding of eligible accounts receivable and eligible inventory of BioScrip and its subsidiaries.

About BioScrip

BioScrip, Inc. (<http://www.bioscrip.com>) (Nasdaq: BIOS) is a national provider of specialty pharmacy and home care products and services that partners with patients, physicians, hospitals, healthcare payors and pharmaceutical manufacturers to provide clinical management solutions and delivery of cost-effective access to prescription medications. Our services are designed to improve clinical outcomes for chronic and acute healthcare conditions while controlling overall healthcare costs.

Forward Looking Statements-Safe Harbor

Statements contained in this press release that express a belief, expectation, anticipation or intent are considered forward-looking statements and are protected under the Safe Harbor of Private Securities Litigation and Reform Act. These forward-looking statements are based on information available to the Company today, and the Company assumes no obligation to update statements as circumstances change. These forward-looking statements may involve a number of risks and uncertainties, which may cause the Company's results to differ materially from such statements.

Forward-looking statements are subject to inherent risks and uncertainties surrounding future expectations generally and may differ materially from actual future experience. Risks and uncertainties that could affect forward-looking statements include the failure to realize synergies as a result of operational efficiencies or revenue opportunities, the failure to successfully integrate the business and operations from the CHS acquisition, leverage core competencies or maximize margins and operating cash flow generation, and the risks described from time to time in the Company's reports filed with the SEC, including the Company's annual report on Form 10-K for the year ended December 31, 2009 and the Company's quarterly reports on Form 10-Q for the quarters ended March 31, 2010 and June 30, 2010.

SOURCE: BioScrip, Inc.

Joele Frank, Wilkinson Brimmer Katcher
Dan Katcher / Bryan Darrow, 212-355-4449