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): June 29, 2017

BIOSCRIP, INC.
(Exact name of Registrant as specified in its charter)

Delaware	000-28740	05-0489664
(State of Incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

1600 Broadway, Suite 700, Denver, Colorado	80202
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: (720) 697-5200

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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

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

Item 1.01 Entry into a Material Definitive Agreement.

On June 29, 2017, BioScrip, Inc. (the "Company") and its subsidiaries entered into various agreements pursuant to which they will issue new senior secured notes, common stock and warrants to purchase common stock and refinance their existing senior secured credit facilities. The consummation of the transactions contemplated by the various agreements is expected to take place later in the day on June 29, 2017 (the date of closing, the "Closing Date"). The information set forth under items 1.02, 2.03 and 3.02 of this report is incorporated in this item 1.01 by reference in its entirety.

Notes Facilities

On June 29, 2017, the Company entered into (i) a first lien note purchase agreement (the "First Lien Note Facility"), among the Company, which is the issuer under the agreement, the financial institutions and note purchasers from time to time party to the agreement (the "First Lien Note Purchasers"), and Wells Fargo Bank, National Association, in its capacity as collateral agent for itself and the First Lien Note Purchasers (the "First Lien Collateral Agent"), pursuant to which the Company will issue first lien senior secured notes in an aggregate principal amount of $200 million (the "First Lien Notes"); and (ii) a second lien note purchase agreement (the "Second Lien Note Facility" and, together with the First Lien Note Facility, the "Notes Facilities") among the Company, which is the issuer under the agreement, the financial institutions and note purchasers from time to time party to the agreement (the "Second Lien Note Purchasers"), and Wells Fargo Bank, National Association, in its capacity as collateral agent for itself and the Second Lien Note Purchasers (the "Second Lien Collateral Agent" and, together with the First Lien Collateral Agent, the "Collateral Agent"), pursuant to which the Company (a) will issue second lien senior secured notes in an aggregate initial principal amount of $100 million (the "Initial Second Lien Notes") and (b) has the ability to draw upon the Second Lien Note Facility and issue second lien delayed draw senior secured notes in an aggregate initial principal amount of $10 million for a period of 18 months after the Closing Date, subject to certain terms and conditions (the "Second Lien Delayed Draw Notes" and, together with the Initial Second Lien Notes, the "Second Lien Notes"; the Second Lien Notes, together with the First Lien Notes, the "Notes"). Funds managed by Ares Management L.P. ("Ares") are acting as lead purchasers for the Notes Facilities.

On the Closing Date, the Company will utilize the proceeds of the sale of the First Lien Notes and the Initial Second Lien Notes pursuant to the Note Facilities to repay in full (i) all amounts outstanding under its Credit Agreement dated as of July 31, 2013, with SunTrust Bank, Jefferies Finance LLC and Morgan Stanley Senior Funding, Inc. (as amended, the "Existing Senior Credit Facility") and (b) all amounts outstanding under its Priming Credit Agreement, dated as of January 6, 2017, among the Issuer, the lenders from time to time party thereto and SunTrust Bank, as administrative agent (the "Priming Credit Agreement" and, together with the Existing Senior Credit Facility, the "Existing Credit Agreements"). Each of the Existing Credit Agreements will be terminated following such repayment. The Company intends to use the remaining proceeds (which the Company anticipates would be approximately $16.6 million after payment of all fees and expenses of the transaction) of the Notes Facilities and the Private Placement (defined below) for working capital and general corporate purposes.

First Lien Note Facility

The First Lien Notes accrue interest, payable monthly in arrears, at a floating rate or rates equal to, at the option of the Company, (i) the base rate (defined as the highest of the Federal Funds Rate plus 0.5% per annum, the Prime Rate as published by The Wall Street Journal and the one-month London Interbank Offered Rate ("LIBOR") (subject to a 1.0% floor) plus 1.0%), or (ii) the one-month LIBOR rate (subject to a 1.0% floor), plus a margin of 6.0% if the base rate is selected or 7.0% if the LIBOR Option is selected. The First Lien Notes mature on August 15, 2020, provided that if the Company's existing 8.875% Senior Notes due 2021 (the "Senior Notes"), are refinanced prior to August 15, 2020, then the scheduled maturity date of the First Lien Notes shall be June 30, 2022.

The First Lien Notes will amortize in equal quarterly installments equal to 0.625% of the aggregate principal amount of the First Lien Note Facility, commencing on September 30, 2019, and on the last day of each third month thereafter, with the balance payable at maturity. The First Lien Notes are pre-payable at the Company's option at specified premiums to the principal amount that will decline over the term of the First Lien Note Facility. If the First Lien Notes are prepaid prior to the second anniversary of the Closing Date, the Company will be required to pay a make-whole premium based on the present value (using a discount rate based on the specified treasury rate plus 50 basis points) of all remaining interests payments on the First Lien Notes being prepaid prior to the second anniversary of the Closing Date, plus 4.0% of the principal amount of First Lien Notes being prepaid. On or after the second anniversary of the Closing Date, the prepayment premium is 4.0%, which declines to 2.0% on or after the third anniversary of the Closing Date, and declines to 0.0% on or after the fourth anniversary of the Closing Date. The occurrence of certain events of default may increase the applicable rate of interest by 2% and could result in the acceleration of the Company's obligations under the First Lien Note Facility prior to stated maturity and an obligation of the Company to pay the full amount of its obligations under the First Lien Note Facility.

The First Lien Note Facility contains customary events of default that include, among others, non-payment of principal, interest or fees, violation of covenants, inaccuracy of representations and warranties, bankruptcy and insolvency events, material judgments, cross-defaults to material indebtedness and events constituting a change of control. In addition, the obligations under the First Lien Note Facility will be guaranteed by joint and several guarantees from the Company's subsidiaries.

In connection with the First Lien Note Facility, the Company, its subsidiaries and the First Lien Collateral Agent entered into a First Lien Guaranty and Security Agreement, dated as of June 29, 2017 (the "First Lien Guaranty and Security Agreement"). Pursuant to the First Lien Guaranty and Security Agreement, the obligations under the First Lien Notes will be secured by first priority liens on, and security interests in, substantially all of the assets of the Company and its subsidiaries.

The Company expects that the closing of the transactions contemplated by the First Lien Note Facility will occur later in the day on June 29, 2017.

The foregoing description of the First Lien Note Facility and the First Lien Guaranty and Security Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the First Lien Note Facility and the First Lien Guaranty and Security Agreement, copies of which are attached as hereto as Exhibits 10.1 and 10.2, respectively, and incorporated herein by reference.

Second Lien Note Facility

The Second Lien Notes accrue interest, payable monthly in arrears, at a floating rate or rates equal to, at the option of the Company, (i) one-month LIBOR (subject to a 1.25% floor) plus 9.25% per annum in cash, (ii) one-month LIBOR (subject to a 1.25% floor) plus 11.25% per annum, which amount will be capitalized on each interest payment date, or (iii) one-month LIBOR (subject to a 1.25% floor) plus 10.25% per annum, of which one-half LIBOR plus 4.625% per annum will be payable in cash and one-half LIBOR plus 5.625% per annum will be capitalized on each interest payment date, provided that, in each case, if any permitted refinancing indebtedness with which the Senior Notes are refinanced requires or permits the payment of cash interest, all of the interest on the Second Lien Notes shall be paid in cash. The Second Lien Notes mature on August 15, 2020, provided that if the Senior Notes, are refinanced prior to August 15, 2020, then the scheduled maturity date of the Second Lien Notes shall be June 30, 2022.

The Second Lien Notes are not subject to scheduled amortization installments. The Second Lien Notes are pre-payable at the Company's option at specified premiums to the principal amount that will decline over the term of the Second Lien Note Facility. If the Second Lien Notes are prepaid prior to the third anniversary of the Closing Date, the Company will need to pay a make-whole premium based on the present value (using a discount rate based on the specified treasury rate plus 50 basis points) of all remaining interests payments on the Second Lien Notes being prepaid prior to the third anniversary of the Closing Date, plus 4.0% of the principal amount of Second Lien Notes being prepaid. On or after the third anniversary of the Closing Date, the prepayment premium is 4.0%, which declines to 2.0% on or after the fourth anniversary of the Closing Date, and declines to 0.0% on or after the fifth anniversary of the Closing Date. The occurrence of certain events of default may increase the applicable rate of interest by 2% and could result in the acceleration of the Company's obligations under the Second Lien Note Facility prior to stated maturity and an obligation of the Company to pay the full amount of its obligations under the Second Lien Note Facility.

The Second Lien Note Facility contains customary events of default that include, among others, non-payment of principal, interest or fees, violation of covenants, inaccuracy of representations and warranties, bankruptcy and insolvency events, material judgments, cross-defaults to material indebtedness and events constituting a change of control. In addition, the obligations under the Second Lien Note Facility will be guaranteed by joint and several guarantees from the Company's subsidiaries.

In connection with the Second Lien Note Facility, the Company, its subsidiaries and the Second Lien Collateral Agent entered into a Second Lien Guaranty and Security Agreement, dated as of June 29, 2017 (the "Second Lien Guaranty and Security Agreement"). Pursuant to the Second Lien Guaranty and Security Agreement, the obligations under the Second Lien Notes will be secured by second priority liens on, and security interests in, substantially all of the assets of the Company and its subsidies.

The Company expects that the closing of the transactions contemplated by the Second Lien Note Facility will occur later in the day on June 29, 2017.

In connection with the First Lien Note Facility and the Second Lien Note Facility, the Company, the First Lien Collateral Agent and the Second Lien Collateral Agent, entered into an intercreditor agreement containing customary provisions to, among other things, subordinate the lien priority of the liens granted under the Second Lien Note Facility to the liens granted under the First Lien Note Facility.

The foregoing description of the Second Lien Note Facility and the Second Lien Guaranty and Security Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Second Lien Note Facility and the Second Lien Guaranty and Security Agreement, copies of which are attached as hereto as Exhibits 10.3 and 10.4, respectively, and incorporated herein by reference.

Warrants

In connection with the Second Lien Note Facility, the Company will also issue warrants (the "Warrants") to the purchasers of the Second Lien Notes pursuant to a Warrant Purchase Agreement dated as of June 29, 2017 (the "Warrant Purchase Agreement"). The Warrants entitle the purchasers of the Warrants to purchase shares of Company's common stock, par value 0.0001 per share (the "Common Stock"), representing at the time of any exercise of the Warrants 4.99% of the Common Stock of the Company on a fully diluted basis, subject to the terms of the Warrant Agreement governing the Warrants, dated as of June 29, 2017 (the "Warrant Agreement"); provided, however, the Warrants may not be converted to the extent that, after giving effect to such conversion, the Warrant holders would beneficially own, in the aggregate, in excess of (i) 19.99% of the shares of Common Stock outstanding as of the Closing Date minus (ii) the shares of Common Stock that will be sold pursuant to the Private Placement described below (the "Conversion Cap"). The Conversion Cap will not apply to the Warrants if the Company obtains the approval of its stockholders for the removal of the Conversion Cap, which the Company is required to take certain steps to attempt to obtain, subject to the terms of the Warrant Agreement.

The Warrants have a 10 year term and an initial exercise price of $2.00 per share, and may be exercised by payment of the exercise price in cash or surrender of shares of common stock into which the Warrants are being converted in an aggregate amount sufficient to pay the exercise price. The exercise price and the number of shares that may be acquired upon exercise of the Warrants is subject to adjustments in certain situations, including price based anti-dilution protection whereby, subject to certain exceptions, if the Company later issues Common Stock or certain Common Stock Equivalents (as defined in the Warrant Agreement) at a price less than either the then current market price per share or exercise price of the Warrant, then the exercise price will be decreased and the percentage of shares of Common Stock issuable upon exercise of the Warrants will remain the same, giving effect to such issuance. Additionally, the Warrants have standard anti-dilution protections if the Company effects a stock split, subdivision, reclassification or combination of its Common Stock or fixes a record date for the making of a dividend or distribution to stockholders of cash or certain assets. Upon the occurrence of certain business combinations the Warrants will be converted into the right to acquire shares of stock or other securities or property (including cash) of the successor entity.

The Company expects the closing of the transactions contemplated by the Warrant Purchase Agreement will occur later in the day on June 29, 2017.

The foregoing description of the Warrants, the Warrant Agreement and the Warrant Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Warrant Agreement and the Warrant Purchase Agreement, copies of which are attached hereto as 4.1 and 10.5, respectively, and incorporated herein by reference.

Private Placement

On June 29, 2017, the Company entered into a Stock Purchase Agreement (the "SPA") with a fund managed by Ares (the "Stock Purchaser"). Pursuant to the terms of the SPA, the Company will issue and sell to the Stock Purchaser in a private placement (the "Private Placement") 6,359,350 shares of Common Stock at a price of $2.50 per share, for gross proceeds of approximately $16 million.

The SPA contains customary representations, warranties and covenants, including covenants relating to, among other things, information rights, the Company's financial reporting, tax matters, listing compliance under the NASDAQ Global Market, and use of proceeds.

The Company expects that the closing of the transactions contemplated by the SPA will occur later in the day on June 29, 2017.

The foregoing description of the SPA does not purport to be complete and is qualified in its entirety by reference to the full text of the SPA, a copy of which is attached as hereto as Exhibit 10.6 and incorporated herein by reference.

Registration Rights Agreement

The Company entered into a registration rights agreement (the "Registration Rights Agreement") with the Stock Purchaser and the holders of the Warrants that will, among other things and subject to certain exceptions, require the Company, upon the request of the Stock Purchaser and holders of the Warrants to register the resale of the shares of Common Stock that will be issued in the Private Placement and the shares of Common Stock issuable upon exercise of the Warrants. Pursuant to the terms of the Registration Rights Agreement, these registration rights will not become effective until twelve months after the Closing Date and the costs incurred in connection with such registrations will be borne by the Company.

The foregoing description of the Registration Rights Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Registration Rights Agreement, a copy of which is attached as hereto as Exhibit 4.2 and incorporated herein by reference.

Item 1.02 – Termination of a Material Definitive Agreement

The information set forth under Item 1.01 of this report is incorporated in this Item 1.02 by reference in its entirety.

The Company intends use the proceeds of the sale of the Notes described in Item 1.01 to repay in full all amounts outstanding under the Existing Credit Agreements. Upon the Company's repayment in full of all such amounts outstanding, the Existing Credit Agreements, their respective security arrangements and related rights thereunder will be terminated. As of June 29, 2017, loans in an aggregate principal amount of approximately $291.4 million were outstanding under the Existing Credit Agreements. The obligations under the Existing Credit Agreements are secured by security interests in, substantially all of the assets of the Company and its subsidiaries.

Item 2.03 – Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of Registrant.

The disclosure provided above pursuant to Item 1.01 of this report relating to the Notes Facilities, including the applicable Exhibits, is incorporated herein by reference.

Item 3.02 – Unregistered Sales of Equity Securities

The disclosure provided above pursuant to Item 1.01 of this report relating to the Warrants and the Private Placement, including the applicable Exhibits, is incorporated herein by reference.

Item 8.01 – Other Events

On June 29, 2017, the Company issued a press release announcing its entry into the Note Facilities, the SPA and the Warrant Purchase Agreement, a copy of which is attached hereto as Exhibit 99.1 and incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

See the Exhibit Index which is hereby incorporated herein by reference.

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: June 29, 2017

/s/ Kathryn M. Stalmack

By: Kathryn M. Stalmack
Senior Vice President, General Counsel and Secretary

EXHIBIT INDEX

Exhibit Number	Description
4.1	Warrant Agreement, dated as of June 29, 2017, by and among the Company and the subscribers signatory thereto.
4.2	Registration Rights Agreement, dated as of June 29, 2017, by and among the Company and the other parties signatory there
10.1	First Lien Note Purchase Agreement, dated as of June 29, 2017, by and among the Company, the financial institutions and note purchasers from time to time party thereto, and Wells Fargo Bank, National Association, as Collateral Agent.
10.2	First Lien Guaranty and Security Agreement, dated as of June 29, 2017, by and the Company, the subsidiaries of the Company signatory thereto and Wells Fargo Bank, National Association as Collateral Agent.
10.3	Second Lien Note Purchase Agreement, dated as of June 29, 2017, by and among the Company, the financial institutions and note purchasers from time to time party thereto, and Wells Fargo Bank, National Association as Collateral Agent.
10.4	Second Lien Guaranty and Security Agreement, dated as of June 29, 2017, by and the Company, the subsidiaries of the Company signatory thereto and Wells Fargo Bank, National Association as Collateral Agent.
10.5	Warrant Purchase Agreement, dated as of June 29, 2017, by and among the Company and the subscribers signatory thereto.
10.6	Stock Purchase Agreement, dated as of June 29, 2017, by and among the Company and the purchaser signatory thereto.
99.1	Press Release, dated June 29, 2017.

Exhibit 4.1
EXECUTION VERSION

BIOSCRIP, INC.

WARRANT AGREEMENT

DATED AS OF JUNE 29, 2017

WARRANTS TO PURCHASE SHARES OF COMMON STOCK

BIOSCRIP, INC.

WARRANT AGREEMENT

WARRANTS FOR COMMON STOCK

WARRANT AGREEMENT, dated as of June 29, 2017, among BioScrip, Inc., a Delaware corporation (together with its successors and assigns, the "Company") and the purchasers undersigned hereto (collectively and together with each of their respective successors and assigns, the "Purchasers"). Capitalized terms shall have the meaning specified in Section 5.1 hereof.

RECITALS

WHEREAS, on the terms of the Warrant Purchase Agreement, dated as of even date herewith among the Company and the Purchasers, the Purchasers have agreed to acquire from the Company, and the Company has agreed to issue to the Purchasers, Warrants to purchase the percentage of the Fully Diluted Common Stock outstanding on the date of any exercise of the Warrants (less the percentage of the shares of Common Stock previously issued pursuant to the Warrants from time to time as a result of any partial exercise of the Warrants as set forth herein) set forth opposite such Person's name on Annex 1 attached hereto, which Warrants represent the right to purchase, in the aggregate, 4.99 percent of the Fully Diluted Common Stock outstanding on the date of any exercise of the Warrants, subject to adjustment as set forth herein;

WHEREAS, the Company and the Purchasers wish to enter into this Agreement to govern the terms of the Warrants.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual agreements set forth herein, the parties to this Agreement hereby agree as follows:

1. FORM, EXECUTION AND TRANSFER OF WARRANT CERTIFICATES.

1.1 Form of Warrant Certificates.

The Warrant Certificates shall be in the form set forth in Attachment A hereto. The Warrant Certificates may have such letters, numbers or other marks of identification or designation as may be required to comply with any law or with any rule or regulation of any governmental authority, stock exchange or self-regulatory organization made pursuant thereto ("Law"). Each Warrant Certificate shall be dated the date of issuance thereof by the Company, either upon initial issuance or upon transfer or exchange. Each Warrant Certificate shall represent the right to purchase the percentage of the Fully Diluted Common Stock outstanding on the date of any exercise of the Warrants set forth in such Warrant Certificate at a price per share of Common Stock equal to the Exercise Price applicable to that Warrant Certificate; *provided*, that the number of shares of Common Stock issuable upon exercise of the Warrants and the Exercise Price thereof shall be subject to adjustment as provided herein.

1.2 Execution of Warrant Certificates; Registration Books.

(a) **Execution of Warrant Certificates**. The Warrant Certificates shall be executed on behalf of the Company by an officer of the Company authorized by the Board of Directors. In case the officer of the Company who shall have signed any Warrant Certificate shall cease to be such an officer of the Company before issuance and delivery by the Company of such Warrant Certificate, such Warrant Certificate nevertheless may be issued and delivered with the same force and effect as though the individual who signed such Warrant Certificate had not ceased to be such an officer of the Company, and any Warrant Certificate may be signed on behalf of the Company by any individual who, at the actual date of the execution of such Warrant Certificate, shall be a proper officer of the Company to sign such Warrant Certificate, although at the date of the execution of this Agreement any such individual was not such an officer.

(b) **Registration Books.** The Company will keep or cause to be kept at its office, maintained at the address of the Company referenced in Section 6.5, at the Company's transfer agent, or at such other office of the Company of which the Company shall have given notice to each holder of Warrant Certificates, books for registration and transfer of the Warrant Certificates issued hereunder. Such books shall show the names and addresses of the respective holders of the Warrant Certificates, the registration number and date of each of the Warrant Certificates and the Denomination thereof.

1.3 Transfer, Split Up, Combination and Exchange of Warrant Certificates; Lost or Stolen Warrant Certificates.

(a) **Transfer, Split Up, etc.**

(i) **Transfer**. Subject to compliance with the Securities Act, any applicable state securities laws and the Company's organizational documents, any Warrant Certificate (or portion thereof), with or without other Warrant Certificates, may be transferred to any Person for a Warrant Certificate or Warrant Certificates in an aggregate like Denomination as the Warrant Certificate or Warrant Certificates (or portions thereof) surrendered then entitled such registered holder to purchase. Any registered holder desiring to transfer any Warrant Certificate shall make such request in writing delivered to the Company, which request shall include the identity of the Transferee and the aggregate Denomination of Warrants to be transferred, and shall surrender the Warrant Certificate or Warrant Certificates (or portions thereof) to be transferred at the office of the Company referenced in Section 6.5, whereupon the Company shall deliver promptly to such Transferee a Warrant Certificate or Warrant Certificates, as the case may be, as so requested, which Warrant Certificate or Warrant Certificates shall evidence, collectively, the same aggregate Denomination of Warrants as the Warrant Certificate or Warrant Certificates (or portions thereof) so surrendered for transfer and shall issue a new Warrant Certificate to the transferor representing the Warrants retained by the Transferor if such transfer involved less than the entire Denomination of Warrants held by such Transferor.

(ii) Split Up, Combination, Exchange, etc. Any Warrant Certificate, with or without other Warrant Certificates, may be split up, combined or exchanged for another Warrant Certificate or Warrant Certificates, in an aggregate like Denomination as the Warrant Certificate or Warrant Certificates surrendered then entitle such registered holder to purchase. Any registered holder desiring to split up, combine or exchange any Warrant Certificate shall make such request in writing delivered to the Company, and shall surrender the Warrant Certificate or Warrant Certificates to be split up, combined or exchanged at the office of the Company referenced in Section 6.5, whereupon the Company shall deliver promptly to such registered holder a Warrant Certificate or Warrant Certificates, as the case may be, as so requested, which Warrant Certificate or Warrant Certificates shall evidence, collectively, the same aggregate Denomination as the Warrant Certificate or Warrant Certificates so surrendered for split-up, combination or exchange.

(b) **Loss, Theft, etc.** Upon receipt by the Company of evidence reasonably satisfactory to it of the ownership of, and the loss, theft, destruction or mutilation of, any Warrant Certificate, and:

(i) in the case of loss, theft or destruction, an affidavit of loss, together with a customary and reasonable indemnity reasonably satisfactory to the Company; or

(ii) in the case of mutilation, upon surrender and cancellation thereof;

the Company at its own expense will execute and deliver, in lieu thereof, a new Warrant Certificate, dated the date of such lost, stolen, destroyed or mutilated Warrant Certificate and of like tenor, in lieu of the lost, stolen, destroyed or mutilated Warrant Certificate and evidencing the same Denomination as the Warrant Certificate so lost, stolen, destroyed or mutilated.

1.4 Subsequent Issuance of Warrant Certificates.

Subsequent to the original issuance, no Warrant Certificates shall be issued except:

(a) Warrant Certificates issued upon any transfer, combination, split up or exchange of Warrants pursuant to Section 1.3(a);

(b) Warrant Certificates issued in replacement of mutilated, destroyed, lost or stolen Warrant Certificates pursuant to Section 1.3(b);

(c) Warrant Certificates issued pursuant to Section 2.3 upon the partial exercise of any Warrant Certificate to evidence the unexercised portion of such Warrant Certificate; and

(d) Warrant Certificates to reflect any adjustments pursuant to Section 4.

1.5 Effect of Issuance in Registered Form.

Every holder of a Warrant Certificate by accepting the same consents and agrees with the Company and with every other holder of a Warrant Certificate that:

(a) the Warrant Certificates, to the extent then currently transferable, are transferable only on the registry books of the Company if and when surrendered at the office of the Company referenced in Section 6.5, duly endorsed or accompanied by an instrument of transfer (in the form attached thereto) and payment of any applicable transfer, stamp or issue tax (a "Tax"); and

(b) the Company may deem and treat the Person in whose name each Warrant Certificate is registered as the absolute owner thereof and of the Warrants evidenced thereby (notwithstanding any notations of ownership or writing on the Warrant Certificates made by anyone other than the Company) for all purposes whatsoever, and the Company shall not be affected by any notice to the contrary.

2. EXERCISE OF WARRANTS; PAYMENT OF EXERCISE PRICE.

2.1 Exercise of Warrants.

(a) **Manner of Exercise**. At any time and from time to time prior to the Expiration Time, the holder of any Warrant Certificate may exercise the Warrants evidenced thereby, in whole or in any part, by surrender to the Company, at its office referenced in Section 6.5, of such Warrant Certificate, together with a duly executed election to purchase (a form of which is attached to each Warrant Certificate) and payment of the applicable Exercise Price for each share of Common Stock with respect to which the Warrants are then being exercised and an amount equal to any applicable Tax (if not payable by the Company as provided in Section 3.3). Such Exercise Price shall be payable in cash or by withholding of shares of Common Stock into which the Warrants are being exercised pursuant to Section 2.1(b).

(b) **Payment in Cash or by Withholding of Common Stock**. Upon exercise of any Warrants, the holder of a Warrant Certificate may pay the Exercise Price by either (i) certified or official bank check payable to the order of the Company or by wire transfer of immediately available funds to the account of the Company designated in writing by the Company or (ii) instructing the Company to withhold that number of shares of Common Stock (or fraction thereof) then issuable upon such exercise with an aggregate Market Price as of such exercise date equal to the aggregate Exercise Price. The Company acknowledges that the provisions of this clause are intended, in part, to ensure that a full or partial exchange of a Warrant Certificate will qualify as a conversion, within the meaning of paragraph (d)(3)(ii) of Rule 144 under the Securities Act.

(c) **Fractional shares of Common Stock**. The Company may, in accordance with Section 2.6, pay the exercising holder cash in lieu of issuing a fractional share in connection with an exercise of Warrants; provided that, if it does not issue a fractional share in such circumstances, it will make such cash payment.

2.2 Issuance of Common Stock.

Upon timely receipt of a Warrant Certificate, accompanied by the form of election to purchase duly executed, and payment of the Exercise Price for each of the shares of the Common Stock to be purchased and by an amount equal to any applicable Tax (if not payable by the Company as provided in Section 3.3), the Company shall thereupon promptly cause certificates representing the number of whole shares of Common Stock then being purchased, reflecting the product of (i) the Denomination of such Warrant Certificate times (ii) the Fully Diluted Common Stock outstanding on the date of the exercise of such Warrant Certificate, to be delivered to or upon the order of the registered holder of such Warrant Certificate, registered in such name or names as may be designated by such holder, and, promptly after such receipt deliver the cash, if any, to be paid in lieu of fractional shares pursuant to Section 2.6 to or upon the order of the registered holder of such Warrant Certificate.

2.3 Unexercised Warrants.

In the event that the registered holder of any Warrant Certificate shall exercise less than all the Warrants evidenced thereby, a new Warrant Certificate evidencing a Denomination equal to the excess of (i) the Denomination (with respect to the Fully Diluted Common Stock outstanding on the date of any exercise of such Warrant Certificate) of the original Warrant Certificate over (ii) the Denomination (with respect to the Fully Diluted Common Stock outstanding on the actual date of such exercise) of such exercise shall be issued by the Company to the registered holder of such Warrant Certificate or to its duly authorized assigns. The Denomination of the new Warrant Certificate for the Denomination remaining unexercised shall be with respect to the Fully Diluted Common Stock outstanding on the date of any future exercise of such Warrant Certificate.

2.4 Cancellation and Destruction of Warrant Certificates.

All Warrant Certificates surrendered to the Company for the purpose of exercise, payment of the Exercise Price, exchange, substitution or transfer shall be cancelled by it, and no Warrant Certificates shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Agreement. The Company shall cancel and retire any other Warrant Certificates purchased or acquired by the Company.

2.5 Expiration.

All Warrants that have not been exercised or purchased in accordance with the provisions of this Agreement shall expire and all rights of holders of such Warrants hereunder shall terminate and cease at the Expiration Time.

2.6 Fractional shares of Common Stock.

The Company shall not be required to issue fractional shares of Common Stock upon the exercise of any Warrant. If fractional shares are not issued upon the exercise of any Warrant, there shall be paid to the holder thereof, in lieu of any fractional share of Common Stock resulting therefrom, an amount of cash equal to the product of:

(a) the fractional amount of such share of Common Stock; and

(b) the Market Price, as determined on the trading day immediately prior to the date of exercise of such Warrant.

2.7 Limitation on Conversion.

(i) Notwithstanding anything herein to the contrary, but subject to clause (ii) below, to the extent that upon a written request to exercise Warrants pursuant to this Section 2 (a "**Triggering Request**"), the shares of Common Stock issuable upon such Triggering Request, in addition to the number of shares of Common Stock previously issued pursuant to exercise of Warrants and the number of shares of Common Stock issued pursuant to the Stock Purchase Agreement dated as of June 29, 2017, would exceed 19.99% of the shares of Common Stock outstanding as of the date hereof (the "**Conversion Cap**"), the Triggering Request shall be permitted only as a partial exercise pursuant to Section 2.3 up to the Conversion Cap. In the event that multiple holders of Warrants have substantially contemporaneously requested exercise of Warrants above the Conversion Cap, such multiple requests shall be permitted as partial exercises pursuant to Section 2.3 up to the Conversion Cap pro rata among the number of shares of Common Stock issuable upon such requests for exercise; provided that, for the avoidance of doubt, prior to the Stockholder Approval (as defined below), no shares shall be issued upon the exercise of Warrants in excess of the Conversion Cap. After the occurrence of a Triggering Request, subject to clause (ii) below, only exercises of Warrants which would not cause the Conversion Cap to be exceeded are permitted.

(ii) Upon the occurrence of a Triggering Request which would result in the issuance of a number of shares of Common Stock in excess of the Conversion Cap, the Company shall within thirty (30) calendar days of receiving such Triggering Request either (A) include in the proxy statement for the Company's annual meeting of stockholders the Authorization Proposal (defined below), to the extent such proxy statement has not already been cleared with the Securities and Exchange Commission ("**SEC**") or (B) file a proxy statement with the SEC to call a special meeting of stockholders to approve a proposal (the "**Authorization Proposal**") to authorize the Company to thereafter validly and legally issue as fully paid and nonassessable all shares of Common Stock that the holders are entitled to receive upon exercise of the Warrants without regard to the Conversion Cap in compliance with NASDAQ Stock Market Rule 5635 or any other then applicable Law (such approval, the "**Stockholder Approval**"), and after such actions have been taken, the Warrants may be exercised without regard to clause (i) above. The Company agrees that any proxy statement filed by the Company with the SEC with respect to the Authorization Proposal shall contain a recommendation from the Board of Directors of the Company that the Company's stockholders approve the Authorization Proposal, subject to the fiduciary duties of the Board of Directors.

(iii) If the Stockholder Approval is not obtained at the annual meeting in which an Authorization Proposal voted upon or a special meeting called in accordance with Section 2.7(ii), the Company shall to the extent any Warrants are still outstanding submit the Authorization Proposal on a twice per year basis each year thereafter at either the annual meeting of the Company's stockholders or at a special meeting of the Company's stockholders called to consider the Authorization Proposal until the Stockholder Approval is obtained or until the Warrants expire, are terminated or until such Stockholder Approval is no longer required for the full exercise of any outstanding Warrants.

3. AGREEMENTS OF THE COMPANY.

3.1 Reservation of Common Stock.

The Company covenants and agrees that it will at all times cause to be reserved and kept available out of its authorized and unissued shares of treasury shares of Common Stock such number of shares of Common Stock as will be sufficient to permit the exercise in full of all Warrants issued hereunder into Common Stock.

3.2 Common Stock to be Duly Authorized and Issued, Fully Paid and Nonassessable, etc; Compliance with Law

The Company covenants and agrees that it will take all such action as may be necessary to ensure that all shares of Common Stock delivered upon the exercise of any Warrant and the payment of the Exercise Price pursuant to Section 2.1 (in each case, at the time of delivery of the certificates representing such shares of Common Stock) shall (a) be duly and validly authorized and issued and fully paid and nonassessable, free of any preemptive rights in favor of any Person in respect of such issuance and free of any security interest, pledge, mortgage, lien, charge or other encumbrance created by, or arising out of actions of, the Company, in each case other than (i) resulting from the actions and circumstances of the holder of such shares of Common Stock, (ii) to the extent imposed by applicable laws or (iii) in the Company's organizational documents and (b) be issued without violation of any applicable Law.

3.3 Taxes.

The Company covenants and agrees that it will pay when due and payable any and all Taxes and charges that may be payable in respect of the initial issuance or delivery of:

(a) each Warrant Certificate;

(b) each Warrant Certificate issued in exchange for any other Warrant Certificate pursuant to Section 1.3, Section 2.3 or Section 4; and

(c) each share of Common Stock issued upon the exercise of any Warrant.

The Company shall not, however, be required to:

(i) pay any Tax that may be payable in respect of the transfer or delivery of Warrant Certificates in a name other than that of the registered holder of the Warrant Certificate surrendered for exercise, conversion, transfer or exchange (any such Tax being payable by the holder of such certificate at the time of surrender); or

(ii) issue or deliver any such certificates referred to in the foregoing clause (i) until any such Tax referred to in the foregoing clause (i) shall have been paid.

3.4 Common Stock Record Date.

Each Person in whose name any certificate for shares of Common Stock is issued upon the exercise of Warrants shall for all purposes be deemed to have become the holder of record of the Common Stock represented thereby on, and such certificates (if any) shall be dated, the date upon which the Warrant Certificate evidencing such Warrants was duly surrendered with an election to purchase attached thereto duly executed and payment of the aggregate Exercise Price (and any applicable Taxes, if payable by such Person) was made.

3.5 Rights in Respect of Common Stock.

Prior to the exercise of the Warrants evidenced thereby, the holder of a Warrant Certificate shall not be entitled to any rights of a stockholder of the Company with respect to the Common Stock into which the Warrants shall be exercisable, including, without limitation, the right to vote in respect of any matter upon which the holders of Common Stock may vote, the right to receive any distributions of cash or property and, except as expressly set forth herein, the right to receive any notice of any proceedings of the Company. Prior to the exercise of the Warrants evidenced thereby, the holders of the Warrant Certificates shall not have as such any obligation in respect of any assessment or any other obligation or liability as a stockholder of the Company, whether such obligations or liabilities are asserted by the Company or by creditors of the Company.

4. ANTI-DILUTION ADJUSTMENTS.

4.1 Adjustments.

The number of shares of Common Stock purchasable upon the exercise of each Warrant, and the Exercise Price, shall be subject to adjustment as set forth in this Section 4; provided that no adjustment of the Exercise Price shall result in an increase in the Exercise Price.

4.2 Stock Splits, Subdivisions, Reclassifications or Combinations.

If the Company shall (i) declare and pay a dividend or make a distribution on its Common Stock in shares of Common Stock, (ii) subdivide or reclassify the outstanding shares of Common Stock into a greater number of shares, or (iii) combine or reclassify the outstanding shares of Common Stock into a smaller number of shares, the Denomination of any Warrant Certificate and the percentage of Fully Diluted Common Stock issuable upon exercise of any Warrants at the time of the record date for such dividend or effective date of such split, reverse split, subdivision, combination or reclassification shall remain the same, and the Exercise Price in effect at the time of the effective date of such split, reverse split, subdivision, combination or reclassification shall be adjusted to the number obtained by dividing (x) the product of (1) the number of shares of Common Stock issuable upon the exercise of such Warrants before such adjustment and (2) the Exercise Price in effect immediately prior to the record or effective date, as the case may be, for the dividend, distribution, split, reverse split, subdivision, combination or reclassification giving rise to this adjustment by (y) the new number of shares of Common Stock issuable upon exercise of such Warrants determined pursuant to the immediately preceding sentence; provided that the Exercise Price shall not be adjusted to be less than the par value of the Common Stock.

4.3 Price Based Anti-Dilution

(a) Without duplication of the adjustments set forth in Sections 4.2 or 4.4, if the Company shall issue or sell any shares of Common Stock (as actually issued or, pursuant to Section 4.3(b), deemed to be issued) for a consideration per share less than either the Market Price per share or the Exercise Price immediately prior to such issuance or sale, or if earlier, upon the execution of the definitive documentation with respect to such issuance or sale (the "Effective Time"), then the Denomination of any Warrant Certificate and the percentage of Fully Diluted Common Stock issuable upon exercise of any Warrants shall remain the same and immediately upon the Effective Time the Exercise Price shall be decreased by dividing the Exercise Price by a fraction, (i) the numerator of which shall be the number of shares of Common Stock actually outstanding immediately prior to the Effective Time plus the number of shares of Common Stock so issued or sold, and (ii) the denominator of which shall be the number of shares of Common Stock actually outstanding immediately prior to the Effective Time plus the number of shares of Common Stock which the aggregate consideration received by the Company for the total number of shares of Common Stock so issued or sold would purchase if such shares were sold at the greater of the Market Price or the Exercise Price. For the purposes of this Section 4.3(a), none of the following issuances shall be considered the issuance or sale of Common Stock:

(i) the issuance of Common Stock (i) upon the conversion or exercise of any then-outstanding Common Stock Equivalents, (ii) to Persons in connection with joint ventures, strategic alliances or other commercial relationships with such Person relating to the operation of the Company's business and not for the primary purpose of raising equity capital, in connection with Business Combinations, or transactions in in which the Company, directly or indirectly, acquires another business or the assets thereof or (iii) in an offering for cash for the account of the Company that is underwritten on a firm commitment basis and is registered with the Securities and Exchange Commission;

(ii) the issuance of any Common Stock or Common Stock Equivalents for which the adjustment provided in Section 4.2 applies;

(iii) the first issuance of shares of Common Stock or Common Stock Equivalents after the date hereof for a consideration per share not less than 85% of the Market Price per share at the Effective Time, provided that such issuance is for no more than 15% of the number of shares of Common Stock actually outstanding immediately prior to the Effective Time applicable to such first issuance; or

(iv) the issuance of shares of Common Stock or Common Stock Equivalents to employees or directors of either the Company or any Company Subsidiary that is approved by the Board of Directors.

(b) For the purposes of Section 4.3(a), the following subparagraphs (i) to (iii), inclusive, shall also be applicable:

(i) If the Company shall grant any rights to subscribe for, or any rights or options to purchase, Common Stock Equivalents, whether or not such rights or options or the right to convert or exchange any such Common Stock Equivalents are immediately exercisable, and the price per share for which Common Stock is issuable upon the exercise of such rights or options or upon conversion or exchange of such Common Stock Equivalents (determined by dividing (A) the total amount, if any, received or receivable by the Company as consideration for the granting of such rights or options, plus the minimum aggregate amount of additional consideration payable to the Company upon the exercise of such rights or options, plus, in the case of any such rights or options which relate to such Common Stock Equivalents, the minimum aggregate amount of additional consideration, if any, payable upon the issue or sale of such Common Stock Equivalents and upon the conversion or exchange thereof, by (B) the total maximum number of shares of Common Stock issuable upon the exercise of such rights or options or upon the conversion or exchange of all such Common Stock Equivalents issuable upon the exercise of such rights or options) shall be less than the Exercise Price or the Market Price per share of Common Stock immediately prior to the time of the granting of such rights or options, or, if earlier, the execution of definitive documentation with respect to such grant, then the total maximum number of shares of Common Stock issuable upon the exercise of such rights or options or upon conversion or exchange of the total maximum amount of such Common Stock Equivalents issuable upon the exercise of such rights or options shall (as of the date of granting of such rights or options) be deemed to be outstanding and to have been issued for such price per share; provided that no further adjustment of the conversion price pursuant to this Section 4.3(b)(i) shall be made (i) upon the actual issuance or sale of such Common Stock Equivalents upon the exercise of any rights to subscribe for, or any rights or options to purchase, such Common Stock Equivalents or (ii) upon the actual issuance or sale of such Common Stock upon the exercise of any such Common Stock Equivalents, including without limitation, in each case of clauses (i) and (ii) with respect to shares of Common Stock Equivalents or Common Stock issued or issuable as a result of the effect of antidilution adjustments under any such security.

(ii) If the Company shall issue or sell any Common Stock Equivalents, whether or not the rights to exchange or convert thereunder are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (A) the total amount received or receivable by the Company as consideration for the issue or sale of such Common Stock Equivalents, plus the minimum aggregate amount of additional consideration, if any, payable to the Company upon the conversion or exchange thereof, by (B) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Common Stock Equivalents) shall be less than the Exercise Price or the Market Price per share of Common Stock immediately prior to the Effective Time, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of such Common Stock Equivalents shall (as of the date of the issue or sale of such Common Stock Equivalents) be deemed to be outstanding and to have been issued for such price per share, provided that no further adjustment of the conversion price pursuant to this Section 4.3(b)(ii) shall be made upon the actual issuance or sale of such Common Stock upon the exercise of any such Common Stock Equivalents, including without limitation, in each case with respect to shares of Common Stock issued or issuable as a result of the effect of antidilution adjustments under any such security.

(iii) In case at any time any shares of Common Stock or Common Stock Equivalents or any rights or options to purchase any such Common Stock or Common Stock Equivalents shall be issued or sold for cash to a non-Affiliate of the Company, the consideration received therefor shall be deemed to be the amount received by the Company therefor. In case any shares of Common Stock or Common Stock Equivalents or any rights or options to purchase any such Common Stock or Common Stock Equivalents shall be issued or sold to an Affiliate of the Company or for a consideration other than or in addition to cash, the amount of the consideration received by the Company shall be deemed to be the Fair Market Value of solely such consideration received by the Company in respect to such purchase of Common Stock or Common Stock Equivalents.

4.4 Other Distributions. In case the Company shall fix a record date for the making of a dividend or distribution to holders of shares of its Common Stock of securities, evidences of indebtedness, assets, cash, rights or warrants (excluding dividends of its Common Stock and other dividends or distributions referred to in Section 4.2), in each such case, the Exercise Price in effect prior to such record date shall be reduced immediately thereafter to the price determined by multiplying the Exercise Price in effect immediately prior to the reduction by the quotient of (x) the Market Price of the Common Stock on the last trading day preceding the first date on which the Common Stock trades on the Exchange on which the Common Stock is listed or admitted to trading without the right to receive such distribution, minus the amount of cash and/or the Fair Market Value of the securities, evidences of indebtedness, assets, rights or warrants to be so distributed in respect of one share of Common Stock (such amount and/or Fair Market Value, the "Per Share Fair Market Value") divided by (y) such Market Price on such date specified in clause (x); such adjustment shall be made successively whenever such a record date is fixed. In such event, the Denomination of any Warrant Certificate and the percentage of Fully Diluted Common Stock issuable upon the exercise of any Warrants shall be increased to the number obtained by dividing (x) the product of (1) the Denomination before such adjustment, and (2) the Exercise Price in effect immediately prior to the distribution giving rise to this adjustment by (y) the new Exercise Price determined in accordance with the immediately preceding sentence. In the event that such distribution is not so made, the Exercise Price and the Denomination then in effect shall be readjusted, effective as of the date when the Board of Directors determines not to distribute such shares, evidences of indebtedness, assets, rights, cash or warrants, as the case may be, to the Exercise Price that would then be in effect and the number of shares of Common Stock that would then be issuable upon exercise of such Warrants if such record date had not been fixed.

4.5 Business Combinations.

In case of any Business Combination or reclassification of Common Stock (other than a reclassification of Common Stock referred to in Section 4.2), a holder's right to receive shares of Common Stock upon exercise of any Warrants shall be converted into the right to exercise such Warrant to acquire the number of shares of stock or other securities or property (including cash) which the Common Stock issuable (at the time of such Business Combination or reclassification) upon exercise of such Warrants immediately prior to such Business Combination or reclassification would have been entitled to receive upon consummation of such Business Combination or reclassification; and in any such case, if necessary, the provisions set forth herein with respect to the rights and interests thereafter of such holder shall be appropriately adjusted so as to be applicable, as nearly as may reasonably be, to such holder's right to exercise such Warrants in exchange for any shares of stock or other securities or property pursuant to this Section 4.5. In determining the kind and amount of stock, securities or the property receivable upon exercise of any Warrants following the consummation of such Business Combination, if the holders of Common Stock have the right to elect the kind or amount of consideration receivable upon consummation of such Business Combination, then the holder of such Warrants shall be entitled to elect the kind or amount of consideration receivable upon consummation of such Business Combination. The Company shall not enter into or be party to any Business Combination unless the successor of the Company (if any), assumes in writing the obligation to deliver to each holder of Warrants hereunder in exchange for such Warrants a security of such successor evidenced by a written instrument substantially similar in form and substance to this Warrant Agreement.

4.6 Expiration of Rights or Options.

Upon the expiration of any rights or options to subscribe for, purchase or convert or exchange Common Stock or Common Stock Equivalents in respect of the issuance, sale or grant of which adjustment was made pursuant to Section 4.3, without the exercise thereof, the Exercise Price shall, upon such expiration, be readjusted and shall thereafter be such Exercise Price as would have been had such Exercise Price not been originally adjusted (or had the original adjustment not been required, as the case may be), as if:

(a) the only shares of Common Stock so issued were the shares of Common Stock, if any, actually issued or sold upon the exercise of such rights or options; and

(b) such shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise plus the aggregate consideration, if any, actually received by the Company for the issuance, sale or grant of all of such rights or options, whether or not exercised.

4.7 Rounding of Calculations; Minimum Adjustments.

All calculations under this Section 4 shall be made to the nearest one-tenth (1/10th) of a cent or to the nearest one-hundredth (1/100th) of a share, as the case may be. Any provision of this Section 4 to the contrary notwithstanding, no adjustment in the Exercise Price or the number of shares of Common Stock into which any Warrants are exercisable shall be made if the amount of such adjustment would be less than $0.01 or one-tenth (1/10th) of a share of Common Stock, but any such amount shall be carried forward and an adjustment with respect thereto shall be made at the earlier of (i) the time of any exercise of Warrants and (ii) the time of and together with any subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate $0.01 or 1/10th of a share of Common Stock, or more.

4.8 Timing of Issuance of Additional Common Stock Upon Certain Adjustments.

In any case in which the provisions of this Section 4 shall require that an adjustment shall become effective immediately after a record date for an event, the Company may defer until the occurrence of such event (i) issuing to the holder of any Warrants exercised after such record date and before the occurrence of such event the additional shares of Common Stock issuable upon such exercise by reason of the adjustment required by such event over and above the shares of Common Stock issuable upon such exercise before giving effect to such adjustment and (ii) paying to such holder any amount of cash in lieu of a fractional share of Common Stock; *provided*, however, that the Company upon written request shall deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares, and such cash, upon the occurrence of the event requiring such adjustment.

4.9 Miscellaneous.

(a) **Statement Regarding Adjustments**. Whenever the Exercise Price or the number of shares of Common Stock into which any Warrants are exercisable shall be adjusted as provided in Section 4, the Company shall promptly file at the principal office of the Company referenced in Section 6.5 a statement showing in reasonable detail the facts requiring such adjustment and the Exercise Price that shall be in effect and the number of shares of Common Stock into which such Warrants shall be exercisable after such adjustment, and the Company shall also cause a copy of such statement to be sent by mail, first class postage prepaid, or email to each holder of Warrants at the address or email address appearing in the Company's records.

(b) **Notice of Adjustment Event**. In the event that the Company shall propose to take any action of the type described in this Section 4 (but only if the action of the type described in this Section 4 would result in an adjustment in the Exercise Price or the number of shares of Common Stock into which Warrants are exercisable or a change in the type of securities or property to be delivered upon exercise of Warrants), the Company shall give notice to the holders of Warrants, in the manner set forth in Section 4.9(a), which notice shall specify the record date, if any, with respect to any such action and the approximate date on which such action is to take place. Such notice shall also set forth the facts with respect thereto as shall be reasonably necessary to indicate the effect on the Exercise Price and the number, kind or class of shares or other securities or property which shall be deliverable upon exercise of any Warrants. In the case of any action which would require the fixing of a record date, such notice shall be given at least 10 days prior to the date so fixed, and in case of all other action, such notice shall be given at least 15 days prior to the taking of such proposed action. Without limiting the foregoing, to the extent notice of any of the foregoing actions or events is given to the holders of the Common Stock, such notice shall be provided to the holders of the Warrants on or before such notice to the holders of Common Stock.

(c) **Proceedings Prior to Any Action Requiring Adjustment**. As a condition precedent to the taking of any action which would require an adjustment pursuant to this Section 4, the Company shall use commercially reasonable efforts to take any action which may be necessary, including obtaining regulatory, New York Stock Exchange, NASDAQ Stock Market or other applicable national securities exchange (an "Exchange") or stockholder approvals or exemptions, in order that the Company may thereafter validly and legally issue as fully paid and nonassessable all shares of Common Stock that the holders are entitled to receive upon exercise of this any Warrants pursuant to this Section 4.

(d) **Adjustment Rules**. Any adjustments pursuant to this Section 4 shall be made successively whenever an event referred to herein shall occur. If more than one subsection of this Section 4 is applicable to a single event, the subsection shall be applied that produces the largest adjustment and no single event shall cause an adjustment under more than one subsection of this Section 4 so as to result in duplication. If an adjustment in Exercise Price made hereunder would reduce the Exercise Price to an amount below par value of the Common Stock, then such adjustment in Exercise Price made hereunder shall reduce the Exercise Price to the par value of the Common Stock.

5. INTERPRETATION OF THIS AGREEMENT.

5.1 Certain Defined Terms.

For the purpose of this Agreement, the following terms shall have the meanings set forth below or set forth in the Section hereof following such term:

"Affiliate" means, with respect to any Person, (a) a director, officer or shareholder of such Person, (b) in the case of a natural person, a spouse, parent, sibling or descendant of such Person (or spouse, parent, sibling or descendant of any director or executive officer of such Person) and (c) any other Person that, directly or indirectly through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, such Person, at such time; provided, however, that none of the Purchasers shall be deemed to be an "Affiliate" of the Company and no Person holding any one or more of the Warrants shall be deemed to be an "Affiliate" of the Company solely by virtue of the ownership thereof.

"Agreement" means this Warrant Agreement as it may from time to time be amended, restated, modified or supplemented.

"Board of Directors" means the board of directors of the Company, including any duly authorized committee thereof.

"Beneficially Own" has the meaning has the meaning given to it in Section 13D of the Exchange Act and the rules promulgated thereunder.

"Business Combination" means any consolidation of the Company with, or merger of the Company with or into, another Person (other than a merger in which (a) the Company is the surviving corporation, (b) that does not result in any reclassification or change of shares of Common Stock outstanding immediately prior to such merger and (c) the holders of Common Stock are not entitled to receive any consideration therefrom), or any sale or conveyance to another Person of the assets of the Company substantially as an entirety.

"business day" means any day that is not a Saturday, Sunday or other day on which banking institutions in New York, New York are authorized or required by Law or executive order to close.

"Capital Stock" means (A) with respect to any Person that is a corporation or company, any and all shares, interests, participations or other equivalents (however designated) of capital or capital stock of such Person and (B) with respect to any Person that is not a corporation or company, any and all partnership or other equity interests of such Person.

"Charter" means, with respect to any Person, its certificate or articles of incorporation, articles of association, or similar organizational document.

"Common Stock" means the Company's common stock, par value $.0001 per share.

"Common Stock Equivalents" means all options, derivatives, rights, warrants and convertible, exercisable or exchangeable securities or instruments (including, without limitation, awards or grants of such securities or instruments to directors, officers, employees or consultants of the Company or to other persons).

"Company" has the meaning set forth in the introductory paragraph hereof.

"Control" means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting Securities, by contract or otherwise.

"Denomination" means, in the case of any Warrant Certificate, the percentage of the Fully Diluted Common Stock outstanding on the date of any exercise of such Warrant Certificate issuable upon exercise of such Warrant Certificate represented thereby.

"Effective Time" has the meaning set forth in Section 4.3(a).

"Exchange" has the set forth in Section 4.9(c).

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

"Exercise Price" means, prior to any adjustment pursuant to Section 4 of this Agreement, the Initial Exercise Price; and thereafter, the Initial Exercise Price as successively adjusted and readjusted from time to time in accordance with the provisions of Section 4.

"Expiration Time" means 5:00 p.m., Eastern time, on the tenth (10th) year anniversary of the date hereof.

"Fair Market Value" means, with respect to any security or other property, the fair market value of such security or other property as determined by the Board of Directors, acting in good faith and transmitted to the holders of Warrants by written notice. The Required Warrantholders may object in writing to the Board of Director's calculation of Fair Market Value within 10 days of receipt of such written notice thereof. If the Required Warrantholders and the Board of Directors are unable to agree on Fair Market Value during the 10-day period following the delivery of the Required Warrantholders' objection, then the Board of Directors shall select and approve an appraiser of national recognition experienced in the business of evaluating or appraising the market value of securities (which appraiser shall be subject to approval by the Required Warrantholders, which approval shall not be unreasonably withheld, conditioned or delayed). The Fair Market Value established by such appraiser shall be conclusive and binding on the parties. The fees and expenses for such appraiser shall be borne 50% by the Company, on the one hand, and 50% by the holders of Warrants, on the other hand.

"Fully Diluted Common Stock" means the sum of (i) all shares of Common Stock actually outstanding (which shall in no event include any shares of Common Stock previously issued from time to time as a result of any partial exercise of the Warrants or to be so issued and sold and for which Section 4.3 is being applied) and (ii) all shares of Common Stock issuable upon conversion or exchange of the Common Stock Equivalents (which, for the avoidance of doubt, for purposes of this definition does not include the Warrants), assuming such Common Stock Equivalents have been converted, exercised or exchanged in full, regardless of whether any such conversion, exercise or exchange is vested, in the money or available under its terms; provided, however, that if any Warrant is exercised in connection with, or substantially contemporaneously with, the Company's entry into, or consummation of, a transaction constituting a Business Combination that would result in any such Common Stock Equivalents expiring or terminating without consideration and without the right to receive payment (whether as a result of conversion, exercise or exchange for Common Stock or settlement in cash), then no such expiring or terminating Common Stock Equivalents shall be included in the calculation of Fully Diluted Common Stock.

"Initial Exercise Price" means, with respect to each Warrant Certificate issued to a Purchaser, $2.00.

"Issue Date" means June 29, 2017.

"Law" has the set forth in Section 1.1.

"Market Price" means, with respect to a particular security, on any given day, the last reported sale price or, in case no such reported sale takes place on such day, the average of the last closing bid and ask prices, in either case on the Exchange on which the applicable securities are listed or admitted to trading. "Market Price" shall be determined without reference to after hours or extended hours trading. If such security is not listed and traded in a manner that the quotations referred to above are available for the period required hereunder, the Market Price per share of Common Stock shall be deemed to be the fair market value per share of such security as determined in good faith by the Board of Directors in reliance on an opinion of a nationally recognized independent investment banking corporation retained by the Company for this purpose (which opinion shall be made available to the holders of Warrants); provided that the Required Warrantholders may object in writing to the Board of Director's calculation of fair market value within 10 days of receipt of written notice thereof. If the Required Warrantholders and the Board of Directors are unable to agree on fair market value during the 10-day period following the delivery of the Required Warrantholders' objection, then the Board of Directors shall select and approve an appraiser experienced in the business of evaluating or appraising the market value of securities (which appraiser shall be subject to approval by the Required Warrantholders, which approval shall not be unreasonably withheld, conditioned or delayed). The Market Price established by such appraiser shall be conclusive and binding on the parties. The fees and expenses for such appraiser shall be borne 50% by the Company, on the one hand, and 50% by the holders of Warrants, on the other hand. For the purposes of determining the Market Price of the Common Stock on the "trading day" preceding, on or following the occurrence of an event, (i) that trading day shall be deemed to commence immediately after the regular scheduled closing time of trading on the Nasdaq Stock Market or, if trading is closed at an earlier time, such earlier time and (ii) that trading day shall end at the next regular scheduled closing time, or if trading is closed at an earlier time, such earlier time (for the avoidance of doubt, and as an example, if the Market Price is to be determined as of the last trading day preceding a specified event and the closing time of trading on a particular day is 4:00 p.m. and the specified event occurs at 5:00 p.m. on that day, the Market Price would be determined by reference to such 4:00 p.m. closing price).

"Per Share Fair Market Value" has the meaning set forth in Section 4.4.

"Person" has the meaning given to it in Section 3(a)(9) of the Exchange Act and as used in Sections 13(d)(3) and 14(d)(2) of the Exchange Act.

"Purchasers" has the meaning set forth in the introductory paragraph hereof.

"Required Warrantholders" means, at any time, the holders of Warrants representing at least a majority of the Common Stock issuable upon exercise of the Warrants issued hereunder and not previously exercised (exclusive of any Warrants directly or indirectly held by the Company or any Affiliate of the Company).

"Securities Act" means the Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

"Tax" or "Taxes" has the meaning set forth in Section 1.5(a).

"trading day" means (A) if the shares of Common Stock are not traded on any national or regional securities exchange or association or over-the-counter market, a business day or (B) if the shares of Common Stock are traded on any national or regional securities exchange or association or over-the-counter market, a business day on which such relevant exchange or quotation system is scheduled to be open for business and on which the shares of Common Stock (i) are not suspended from trading on any national or regional securities exchange or association or over-the-counter market for any period or periods aggregating one half hour or longer; and (ii) have traded at least once on the national or regional securities exchange or association or over-the-counter market that is the primary market for the trading of the shares of Common Stock.

"Transferee" means any registered transferee of all or any part of any one or more Warrant Certificates initially acquired by the Purchasers under this Agreement.

"Warrant" means a warrant to initially purchase one share of Common Stock issued pursuant to this Agreement.

"Warrant Certificate" means a certificate evidencing the Warrants in the form of Attachment A.

5.2 Section Heading and Table of Contents and Construction.

(a) **Section Headings and Table of Contents, etc**. The titles of the Sections of this Agreement and any Table of Contents of this Agreement appear as a matter of convenience only, do not constitute a part hereof and shall not affect the construction hereof. The words "herein," "hereof," "hereunder" and "hereto" refer to this Agreement as a whole and not to any particular Section or other subdivision. References to Sections are, unless otherwise specified, references to Sections of this Agreement. References to Annexes and Attachments are, unless otherwise specified, references to Annexes and Attachments attached to this Agreement.

(b) **Independent Construction**. Each covenant contained herein shall be construed (absent an express contrary provision herein) as being independent of each other covenant contained herein, and compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with one or more other covenants.

5.3 Directly or Indirectly.

Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person, including actions taken by or on behalf of any partnership in which such Person is a general partner.

5.4 Governing Law.

THIS AGREEMENT AND THE WARRANT CERTIFICATES SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND THE RIGHTS OF THE PARTIES SHALL BE GOVERNED BY, THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS RULES THEREOF TO THE EXTENT THAT ANY SUCH RULES WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION, EXCEPT TO THE EXTENT THAT THE DELAWARE GENERAL CORPORATION LAW SPECIFICALLY AND MANDATORILY APPLIES.

6. MISCELLANEOUS.

6.1 Expenses.

Issuance of certificates for shares of Common Stock to a holder upon the exercise of any Warrants shall be made without charge to such holder for any Tax or stamp duty in respect of the issuance of such certificates, all of which Taxes and stamp duties shall be paid by the Company (for the avoidance of doubt, specifically excluding the Taxes not payable by the Company pursuant to Section 3.3).

6.2 Amendment and Waiver.

This Agreement may be amended, and the observance of any term of this Agreement may be waived, with and only with the written consent of the Company and the Required Warrantholders; provided, however, that no amendment or waiver of the provisions of Section 2.1, this Section 6.2, Section 4 or of any term defined in Section 5.1 to the extent used in such specifically referenced Sections, may be made without the prior written consent of all holders of Warrants then outstanding (excluding any Warrants directly or indirectly held by the Company or any Affiliate of the Company); and, provided, further, that

(a) no such amendment or waiver of any of the provisions of this Agreement pertaining to the Exercise Price or the number of shares or kind of Common Stock that may be purchased upon exercise of each Warrant; and

(b) no change accelerating the occurrence of the Expiration Time; shall be effective as to a holder of Warrants unless consented to in writing by such holder.

6.3 Entire Agreement.

This Agreement and the Warrant Certificates embody the entire agreement and understanding among the Company and the Purchasers, and supersede all prior agreements and understandings, relating to the subject matter hereof.

6.4 Successors and Assigns; Multiple Holders.

All covenants and other agreements in this Agreement made by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto to the extent they become holders of Warrants (including, without limitation, any Transferee) whether so expressed or not. Notwithstanding the foregoing sentence, the Company may not assign any of its rights, duties or obligations hereunder or under the Warrant Certificates except pursuant to the terms of this Agreement without the prior written consent of the Required Warrantholders.

Each holder of a Warrant agrees that (i) no other holder of a Warrant will by virtue of this Warrant or exercise thereof be under any fiduciary or other duty to give or withhold any consent or approval under this Warrant or to take any other action or omit to take any action under this Warrant and (ii) each other holder of a Warrant may act or refrain from acting under this Warrant as such other holder may, in its discretion, elect.

6.5 Notices and Information.

All communications hereunder or under the Warrants shall be in writing and shall be delivered either by certified or registered mail, postage pre-paid, return receipt requested, email or nationally recognized overnight courier, and shall be addressed to the following addresses:

(a) if to a Purchaser, at its address set forth on Annex 2 to this Agreement, or at such other address as such Purchaser shall have specified to the Company in writing;

(b) if to any other holder of any Warrant Certificate, addressed to such other holder at such address as such other holder shall have specified to the Company in writing or, if any such other holder shall not have so specified an address to the Company, then addressed to such other holder in care of the last holder of such Warrant Certificate that shall have so specified an address to the Company; and

(c) if to the Company, at the address set forth on Annex 3 to this Agreement, or at such other address as the Company shall have specified to each holder of Warrants in writing.

Any communication addressed and delivered as herein provided shall be deemed to be received when actually delivered to the address of the addressee (whether or not delivery is accepted) by a nationally recognized overnight delivery service which provides proof of delivery or on the date postmarked if sent by registered or certified mail or upon receipt by the recipient's email server if directed to the email address provided in the notice section hereof, as the case may be. Any communication not so addressed and delivered shall be ineffective unless actually received by the intended addressee. Notwithstanding the foregoing provisions of this Section 6.5, service of process in any suit, action or proceeding arising out of or relating to this Agreement or any document, agreement or transaction contemplated hereby shall be delivered in the manner provided in Section 6.8(c).

Upon exercise of any Warrant pursuant to the terms hereof, the Company will answer a limited number of reasonable questions and provide a limited amount of reasonable documentation regarding any non-confidential information supporting its calculation of Fully Diluted Common Stock and the related shares of Common Stock issuable for the Denomination of such Warrant being exercised.

6.6 Severability.

Any provision of this Agreement that 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, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

6.7 Execution in Counterpart.

This Agreement may be executed in one or more counterparts and shall be effective when at least one counterpart shall have been executed by each party hereto, and each set of counterparts that, collectively, show execution by each party hereto shall constitute one duplicate original.

6.8 Waiver of Jury Trial; Consent to Jurisdiction, Etc.

(a) **Waiver of Jury Trial**. THE PARTIES HERETO VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE WARRANTS OR ANY OF THE DOCUMENTS, AGREEMENTS OR TRANSACTIONS CONTEMPLATED HEREBY.

(b) **Consent to Jurisdiction**. ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE WARRANTS, OR ANY OF THE DOCUMENTS, AGREEMENTS OR TRANSACTIONS CONTEMPLATED HEREBY (WHETHER IN TORT, CONTRACT OR OTHERWISE) OR ANY ACTION OR PROCEEDING TO EXECUTE OR OTHERWISE ENFORCE ANY JUDGMENT IN RESPECT OF ANY BREACH UNDER THIS AGREEMENT, THE WARRANTS OR ANY DOCUMENT OR AGREEMENT CONTEMPLATED HEREBY SHALL BE BROUGHT BY SUCH PARTY IN ANY NEW YORK STATE COURT OR FEDERAL DISTRICT COURT LOCATED IN THE SOUTHERN DISTRICT OF NEW YORK AS SUCH PARTY MAY IN ITS SOLE DISCRETION ELECT, AND BY THE EXECUTION AND DELIVERY OF THIS AGREEMENT, THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMIT TO THE IN PERSONAM JURISDICTION OF EACH SUCH COURT, AND EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES AND AGREES NOT TO ASSERT IN ANY PROCEEDING BEFORE ANY TRIBUNAL, BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE, ANY CLAIM THAT IT IS NOT SUBJECT TO THE IN PERSONAM JURISDICTION OF ANY SUCH COURT. IN ADDITION, EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY DOCUMENT, AGREEMENT OR TRANSACTION CONTEMPLATED HEREBY BROUGHT IN ANY SUCH COURT, AND HEREBY IRREVOCABLY WAIVES ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) **Service of Process.** EACH PARTY HERETO IRREVOCABLY AGREES THAT PROCESS PERSONALLY SERVED OR SERVED BY U.S. REGISTERED MAIL AT THE ADDRESSES PROVIDED HEREIN FOR NOTICES SHALL CONSTITUTE, TO THE EXTENT PERMITTED BY LAW, ADEQUATE SERVICE OF PROCESS IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE WARRANTS OR ANY DOCUMENT, AGREEMENT OR TRANSACTION CONTEMPLATED HEREBY, OR ANY ACTION OR PROCEEDING TO EXECUTE OR OTHERWISE ENFORCE ANY JUDGMENT IN RESPECT OF ANY BREACH HEREUNDER, UNDER THE WARRANTS OR UNDER ANY DOCUMENT OR AGREEMENT CONTEMPLATED HEREBY. RECEIPT OF PROCESS SO SERVED SHALL BE CONCLUSIVELY PRESUMED AS EVIDENCED BY A DELIVERY RECEIPT FURNISHED BY THE UNITED STATES POSTAL SERVICE OR ANY COMMERCIAL DELIVERY SERVICE.

[Remainder of page intentionally left blank; next page is signature page]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written.

COMPANY:

BioScrip, Inc.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

PURCHASERS:

ASSF IV AIV B HOLDINGS, L.P.

By: **ASSF IV AIV B HOLDINGS GP LLC**,
its general partner
By: **ASSF IV AIV B, L.P.**,
its sole member
By: **ASSF MANAGEMENT IV, L.P.**,
its general partner
By: **ASSF MANAGEMENT IV GP LLC**,
its general partner

By: /s/ Scott L. Graves
Name: Scott L. Graves
Title: Authorized Signatory

PURCHASERS:

J.P. Morgan Securities LLC

By: /s/ Jeffrey L. Panzo
Name: Jeffrey L. Panzo
Title: Attorney in fact

PURCHASERS:

Goldman Sachs & Co. LLC

By: /s/ Daniel Oneglia
Name: Daniel Oneglia
Title: Managing Director

PURCHASERS:

Western Asset Middle Market Debt Fund Inc.
Western Asset Middle Market Income Fund Inc

By: Western Asset Management Company,
as its Investment Manager and Agent

By:	/s/ Adam Wright
Name:	Adam Wright
Title:	Manager, U.S. Legal Affairs

ATTACHMENT A
[FORM OF WARRANT CERTIFICATE]

THE SECURITIES REPRESENTED HEREBY, AND THE SECURITIES ISSUABLE HEREBY, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS AND NEITHER THE SECURITIES NOR ANY INTEREST THEREIN MAY BE OFFERED, SOLD, TRANSFERRED, PLEDGED OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT OR SUCH LAWS OR AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT AND SUCH LAWS WHICH, IN THE OPINION OF COUNSEL FOR THE COMPANY, IS AVAILABLE. THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS OF A CERTAIN WARRANT AGREEMENT, DATED AS OF JUNE 29, 2017, THE PROVISIONS OF WHICH ARE INCORPORATED HEREIN BY REFERENCE. A COPY OF SUCH AGREEMENT IS AVAILABLE FROM THE COMPANY UPON REQUEST.

WARRANT CERTIFICATE

BIOSCRIP, INC.

No. WRT- Warrants

Date: [ ], 20[ ]

This Warrant Certificate certifies that _____, or registered assigns, is the registered holder of Warrants entitling the owner thereof to purchase at any time on or after the date hereof and on or prior to the Expiration Time, the number of fully paid and nonassessable shares of Common Stock, $0.0001 par value per share (the "Common Stock"), of BIOSCRIP, INC., a Delaware corporation (together with its successors and assigns, the "Company") equal to 4.99% (the "Denomination") times the Fully Diluted Common Stock outstanding on the date of any exercise of the Warrants, at a purchase price (subject to adjustment as provided in the Warrant Agreement (as defined below), the "Exercise Price") of $2.00 per share of Common Stock upon presentation and surrender of this Warrant Certificate to the Company with a duly executed election to purchase and payment of the Exercise Price (including by withholding of shares of Common Stock), all in the manner set forth in the Warrant Agreement (defined below). The Denomination of each Warrant and the Exercise Price are the Denomination and the Exercise Price as of the date hereof, and are subject to adjustment as referred to below.

The Warrants are issued pursuant to a Warrant Agreement (as it may from time to time be amended or supplemented, the "Warrant Agreement"), dated as of June 29, 2017, among the Company and the Purchasers named therein, and are subject to all of the terms, provisions and conditions thereof, which Warrant Agreement is hereby incorporated herein by reference and made a part hereof and to which Warrant Agreement reference is hereby made for a full description of the rights, obligations, duties and immunities of the Company and the holders of the Warrant Certificates. Capitalized terms used, but not defined, herein have the respective meanings ascribed to them in the Warrant Agreement. In the event of any conflict between this Warrant Certificate and the Warrant Agreement, the Warrant Agreement shall control and govern.

As provided in the Warrant Agreement, the Exercise Price and the Denomination evidenced by this Warrant Certificate are, upon the happening of certain events, subject to modification and adjustment. Except as otherwise set forth in, and subject to, the Warrant Agreement, the Expiration Time of this Warrant Certificate is as set forth in the Warrant Agreement.

Subject to the limitations set forth in the Warrant Agreement, this Warrant Certificate shall be exercisable, at the election of the holder, at any time on or after the date hereof and on or prior to the Expiration Time either as an entirety or in part from time to time. If this Warrant Certificate shall be exercised in part, the holder shall be entitled to receive, upon surrender hereof, another Warrant Certificate or Warrant Certificates for the Denomination not exercised. The Warrant Certificates for the unexercised Denomination shall be with reference to the percentage of the Fully Diluted Common Stock outstanding on the date of any future exercise of the Warrants. This Warrant Certificate, with or without other Warrant Certificates, upon surrender in the manner set forth in the Warrant Agreement and subject to the conditions set forth in the Warrant Agreement, may be transferred or exchanged for another Warrant Certificate or Warrant Certificates of like tenor evidencing Warrants entitling the holder to a like Denomination as the Warrants evidenced by the Warrant Certificate or Warrant Certificates surrendered shall have entitled such holder to purchase.

Except as expressly set forth in the Warrant Agreement, no holder of this Warrant Certificate shall be entitled to vote or receive distributions or be deemed for any purpose the holder of shares of Common Stock or of any other Securities of the Company that may at any time be issued upon the exercise hereof, nor shall anything contained in the Warrant Agreement or herein be construed to confer upon the holder hereof, as such, any of the rights of a holder of a share of Common Stock in the Company or any right to vote upon any matter submitted to holders of shares of Common Stock at any meeting thereof, or to give or withhold consent to any corporate action of the Company (whether upon any recapitalization, issuance of stock, reclassification of Securities, change of par value, consolidation, merger, conveyance, or otherwise), or to receive dividends or subscription rights, or otherwise, until the Warrant or Warrants evidenced by this Warrant Certificate shall have been exercised as provided in the Warrant Agreement.

In the event of any inconsistency between this warrant Certificate and the Warrant agreement, the terms of the Warrant Agreement shall govern.

THIS WARRANT CERTIFICATE SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND THE RIGHTS OF THE COMPANY AND THE HOLDER HEREOF SHALL BE GOVERNED BY, THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS RULES THEREOF TO THE EXTENT THAT ANY SUCH RULES WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION, EXCEPT TO THE EXTENT THAT THE DELAWARE GENERAL CORPORATION LAW SPECIFICALLY AND MANDATORILY APPLIES.

WITNESS the signature of a proper officer of the Company as of the date first above written.

BIOSCRIP, INC.
By:
Name:
Title:

[FORM OF ASSIGNMENT]
(To be executed by the registered holder if such holder desires to transfer the Warrant Certificate)

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers unto

_____

(Please print name and address of transferee.)

the accompanying Warrant Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint:

_____

attorney, to transfer the accompanying Warrant Certificate on the books of the Company with full power of substitution.

Dated: , 20 .

[HOLDER]
By:

NOTICE

The signature to the foregoing Assignment must correspond to the name as written upon the face of the accompanying Warrant Certificate or any prior assignment thereof in every particular, without alteration or enlargement or any change whatsoever.

_____

[FORM OF ELECTION TO PURCHASE]
(To be executed by the registered holder if such holder desires to exercise the Warrant Certificate)

To: **BIOSCRIP, INC.**

The undersigned hereby irrevocably elects to exercise _____ Denomination of Warrants represented by the accompanying Warrant Certificate to purchase the shares of Common Stock issuable upon the exercise of such Warrants equal to the Denomination times the Fully Diluted Common Stock outstanding on the date hereof, and requests that certificates for such shares be issued in the name of:

_____
(Please print name and address.)

_____
(Please insert social security or other identifying number.)

If such Denomination of Warrants shall not be all the Warrants evidenced by the accompanying Warrant Certificate, a new Warrant Certificate for the balance remaining of such Warrants shall be registered in the name of and delivered to:

_____
(Please print name and address.)

_____
(Please insert social security or other identifying number.)

The undersigned is paying the Exercise Price for the Common Stock to be issued on exercise of the foregoing Warrants, unless payment of such Exercise Price has been waived by the Company, by

[ ] certified or bank check by wire transfer, or
[ ] withholding of shares of Common Stock into which the Warrants are being exercised.

Dated: , 20 .

[HOLDER]
By:

NOTICE

The signature to the foregoing Election to Purchase must correspond to the name as written upon the face of the accompanying Warrant Certificate or any prior assignment thereof in every particular, without alteration or enlargement or any change whatsoever.

ANNEX 1
Warrants Issuable to the Purchasers

Purchaser	Total Denominations of Warrants
ASSF IV AIV B Holdings, L.P.	3.62909%
J.P. Morgan Securities LLC	0.45364%
Goldman Sachs & Co. LLC	0.68045%
Western Asset Middle Market Debt Fund Inc.	0.06805%
Western Asset Middle Market Income Fund Inc	0.15877%

ANNEX 2
Address for Purchasers for Notices

ASSF IV AIV B HOLDINGS, L.P.

ASSF IV AIV B Holdings, L.P.
c/o Ares Management LLC
2000 Avenue of the Stars, 12th Floor
Los Angeles, CA 90067

J.P. MORGAN SECURITIES LLC

J.P. Morgan Securities LLC
4 New York Plaza, 15th Floor, Mail Code NY1-E054
New York, New York 10004
Attention: Jeffrey L. Panzo
Email: Jeffrey.L.Panzo@JPMorgan.com
Phone No.: (212) 499-1435

GOLDMAN SACHS & CO. LLC

Goldman Sachs & Co. LLC
200 West Street, 26th Floor
Attn: Paul Burningham and Paige Cataruozolo
New York, New York 10282
Email: ficc-amssg-mo@gs.com
Phone No.: (917) 343-8393 (Paul Burningham),
(917) 343-3096 (Paige Cataruozolo)

WESTERN ASSET MIDDLE MARKET DEBT FUND INC.
WESTERN ASSET MIDDLE MARKET INCOME FUND INC

Western Asset Management Company
385 East Colorado Boulevard
Pasadena, California 91101
Attention: Legal Department

ANNEX 3
Address of Company for Notices

BioScrip, Inc.
1600 Broadway, Suite 700
Denver, CO 80202
Attn: Stephen Deitsch, Senior Vice President,
Chief Financial Officer & Treasurer
Email: Stephen.Deitsch@bioscrip.com
Telecopy Number: (720) 468-4040

With a copy (which shall not constitute notice) to:

Dechert LLP
1095 Avenue of the Americas
New York, New York 10036
Attention: Scott M. Zimmerman
Email: Scott.Zimmerman@dechert.com
Telecopy Number: (212) 698-3599

Exhibit 4.2
EXECUTION VERSION

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this "**Agreement**") is made and entered into as of June 29, 2017, by and among BioScrip, Inc., a Delaware corporation (the "**Company**") and the other entities undersigned hereto (each a "**Stockholder**" and collectively, the "**Stockholders**"). Each of the Company and the Stockholders may be referred to in this Agreement as a "**Party**," and, collectively, as the "**Parties**." Capitalized terms used but not otherwise defined herein have the meanings assigned such terms in Section 9 of this Agreement.

A. The Company and a Stockholder are parties to that certain Stock Purchase Agreement, dated as of June 29, 2017 (the "**Stock Purchase Agreement**"), pursuant to which such Stockholder is purchasing an aggregate of 6,359,350 shares (the "**Purchased Shares**") of common stock of the Company, $0.0001 par value per share (the "**Common Stock**") and the Company and the Stockholders are parties to that certain Warrant Purchase Agreement, dated as of June 29, 2017 (the "**Warrant Purchase Agreement**," and together with the Stock Purchase Agreement, the "Purchase Agreements"), pursuant to which the Stockholders are purchasing an amount of Warrants to purchase in the aggregate 4.99% of the Fully Diluted Common Stock (as defined in the Warrant Purchase Agreement) of the Company ("**Warrants**").

B. In connection with the transactions contemplated by the Purchase Agreements, and pursuant to the terms of the Purchase Agreements, the Parties desire to enter into this Agreement in order to grant to the Stockholders and certain of its permitted transferees certain demand and piggyback registration rights covering the Purchased Shares, all in accordance with the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Stockholders hereby agree as follows:

1. Demand Registrations.

(a) Short-Form Registrations. At any time after twelve (12) months following the date hereof, each Holder may request registration under the Securities Act of all or any portion of its Registrable Securities on Form S-3 or any successor form (each, a "**Short-Form Registration**"), which may, if so requested, be a "shelf" registration under Rule 415 under the Securities Act. A registration shall not count as one of the permitted Short-Form Registrations unless and until a registration statement relating thereto has become effective under the Securities Act. Each request for a Short-Form Registration shall specify the number of Registrable Securities requested to be registered.

(b) Long-Form Registrations. At any time that a Holder is then eligible to request registration under the Securities Act of all or any portion of its Registrable Securities but where Short-Form Registration pursuant to Section 1(a) of this Agreement is not available to be used by the Company in respect of such proposed registration, but in no event earlier than twelve (12) months following the date hereof, each Holder shall be entitled to request a registration on Form S-1 or any similar form (each, a "**Long-Form Registration**"). A registration shall not count as one of the permitted Long-Form Registrations unless and until a registration statement relating thereto has become effective under the Securities Act and each requesting Holder is able to register and sell at least thirty percent (30%) of its Registrable Securities thereunder.

(c) Priority on Demand Registration. Holders shall have the right to request that a Demand Registration be effected as an underwritten offering at any time, subject to this Section 1 by delivering to the Company a notice setting forth such request and the number of Registrable Securities sought to be disposed of by such Holder in such underwritten offering. All Holders proposing to participate in such underwriting shall (i) enter into an underwriting agreement in customary form with the underwriter(s) selected for such underwriting by a Majority-in-Interest of the Registrable Securities included in such offering, which underwriter(s) shall be reasonably acceptable to the Company, provided that, with respect to such underwriting agreement or any other documents reasonably required under such agreement, (A) no Holder shall be required to make any representation or warranty with respect to or on behalf of the Company or any other stockholder of the Company and (B) the liability of any Holder shall be limited as provided in Section 6(b) hereof, and (ii) complete and execute all questionnaires, powers-of-attorney, indemnities, opinions and other documents required under the terms of such underwriting agreement. If the managing underwriter(s) for an underwritten offering advise(s) the Company and the Holders in writing that the dollar amount or number of Registrable Securities which the Holders desire to sell, taken together with all other Common Stock or other securities which the Company desires to sell and the Common Stock or other securities, if any, as to which registration has been requested pursuant to written contractual piggyback registration rights held by other stockholders of the Company, if any, who desire to sell or otherwise, exceeds the maximum dollar amount or maximum number of securities that can be sold in such offering without adversely affecting the proposed offering price, the timing, the distribution method, or the probability of success of such offering (such maximum dollar amount or maximum number of securities, as applicable, the "**Maximum Threshold**"), then the Company shall include in such registration: (1) first, the Registrable Securities (pro rata in accordance with the number of Registrable Securities which such Holders have requested be included in such underwritten offering, regardless of the number of Registrable Securities or other securities held by each such Person) that can be sold without exceeding the Maximum Threshold; (2) second, to the extent that the Maximum Threshold has not been reached under the foregoing clause (1), the Common Stock or other securities that the Company desires to sell that can be sold without exceeding the Maximum Threshold; (3) third, to the extent that the Maximum Threshold has not been reached under the foregoing clauses (1) and (2), the Common Stock or other securities for the account of other Persons that the Company is obligated to register pursuant to written contractual arrangements, if any, with such Persons and that can be sold without exceeding the Maximum Threshold; and (4) fourth, to the extent that the Maximum Threshold has not been reached under the foregoing clauses (1), (2) and (3), the Common Stock that other stockholders desire to sell that can be sold without exceeding the Maximum Threshold to the extent that the Company, in its sole discretion, wishes to permit such sales pursuant to this clause (4).

A request for an underwritten offering may be withdrawn by Holders of a majority of the Registrable Securities proposed to be included in such offering prior to the consummation thereof, and, in such event, such withdrawal shall not be treated as a request for an underwritten offering which shall have been effected pursuant to the immediately preceding paragraph. In no event will a Demand Registration count as a Demand Registration unless at least fifty percent (50%) of all Registrable Securities requested to be registered in such Demand Registration by the Holders initiating such Demand Registration are, in fact, registered in such registration.

(d) The Company shall not be obligated to effect (i) more than 2 Short-Form Registrations or 1 Long-Form Registrations pursuant to this Agreement, (ii) more than one Demand Registration (including any underwritten offering) during any nine-month period or (iii) any Demand Registration unless the number of Registrable Securities sought to be registered on such Registration Statement is at least 30% of the Registrable Securities in the case of a Short-Form Registration and 50% of the Registrable Securities in the case of a Long-Form Registration (subject to adjustment for any stock dividend or stock split or in connection with an exchange or combination of shares, recapitalization, merger, consolidation or other reorganization).

(e) If the filings contemplated herein are not permitted under the rules and regulations promulgated by the Securities and Exchange Commission or by any Commission Guidance, then within ninety (90) days after a written request by one or more Holders to register for resale any additional Registrable Securities owned by such Holders that have not been registered for resale on a "shelf" Registration Statement, the Company shall file a Registration Statement similar to the Registration Statement then effective (each, a "**Follow-On Registration Statement**"), to register for resale 100%, or such portion as permitted by Commission Guidance (provided that the Company shall use commercially reasonable efforts to advocate with the Securities and Exchange Commission for the registration of all or the maximum number of the Registrable Securities as permitted by Commission Guidance), of such additional Registrable Securities. The Company shall give written notice of the filing of the Follow-On Registration Statement at least twenty-five (25) days prior to filing the Follow-On Registration Statement to all Holders (the "**Follow-On Registration Notice**") and shall include in such Follow-On Registration Statement all such additional Registrable Securities with respect to which the Company has received written requests for inclusion therein within twenty (20) days after sending the Follow-On Registration Notice. Notwithstanding the foregoing, the Company shall not be required to file a Follow-On Registration Statement (i) if it has filed a Follow-On Registration Statement within the prior 12-month period, or (ii) if the aggregate amount of additional Registrable Securities requested to be registered on such Follow-On Registration Statement is less than 50% of the Registrable Securities (subject to adjustment for any stock dividend or stock split or in connection with an exchange or combination of shares, recapitalization, merger, consolidation or other reorganization). The Company shall use commercially reasonable efforts to cause such Follow-On Registration Statement to be declared effective as promptly as practicable after filing such Follow-On Registration Statement.

(f) Notwithstanding any other provision of this Agreement, if any Commission Guidance sets forth a limitation of the number of Registrable Securities to be registered on a particular Registration Statement (notwithstanding the Company's commercially reasonable efforts to advocate with the Securities and Exchange Commission for the registration of all or a greater number of Registrable Securities), then, unless otherwise directed in writing by a Holder as to its Registrable Securities, the amount of Registrable Securities to be registered on such Registration Statement will be reduced pro rata among the Holders based on the total number of unregistered Registrable Securities held by such Holders.

2. Piggyback Registrations.

(a) Right to Piggyback. Whenever the Company proposes to register any of its securities under the Securities Act, and the registration form proposed to be used may be used to register the resale of Registrable Securities (each, a "**Piggyback Registration**"), the Company shall give prompt written notice (in any event at least ten (10) Business Days prior to the anticipated filing date of the Registration Statement relating to such registration) to each Holder of its intention to effect such a registration and shall use its commercially reasonable efforts to include in such registration all Registrable Securities with respect to which the Company has received a written request from each Holder for inclusion therein within five (5) Business Days following such Holder's receipt of the Company's notice. All Holders proposing to distribute their securities through a Piggyback Registration that involves an underwriter(s) shall enter into an underwriting agreement in reasonable and customary form with the underwriter(s) selected for such Piggyback Registration, provided that with respect to such underwriting agreement or any other documents reasonably required under such agreement, (i) no Holder shall be required to make any representation or warranty with respect to or on behalf of the Company or any other stockholder of the Company and (ii) the liability of any Holder shall be limited as provided in Section 6(b) hereof and (iii) each Holder shall complete and execute all questionnaires, powers-of-attorney, indemnities, opinions and other documents reasonably required under the terms of such underwriting agreement. No registration effected under this Section 2 shall relieve the Company of its obligations to effect a Demand Registration required by Section 1. If at any time after giving notice of its intention to register any Company securities pursuant to this Section 3(a) and prior to the effective date of the registration statement filed in connection with such registration, the Company shall determine for any reason not to register such securities, the Company shall give notice to all of the Holders participating in such Piggyback Registration and, thereupon, shall be relieved of its obligation to register any Registrable Securities in connection with such registration.

(b) Reduction of Offering. If the managing underwriter(s) for a Piggyback Registration that is to be an underwritten offering advises the Company and the Holders that in their opinion the dollar amount or number of Common Stock or other securities which the Company desires to sell, taken together with Common Stock or other securities, if any, as to which registration has been demanded pursuant to written contractual arrangements with third parties, if any, the Registrable Securities as to which registration has been requested under this Section 2, and the Common Stock or other securities as to which registration has been requested pursuant to the written contractual piggyback registration rights of other stockholders of the Company, exceeds the Maximum Threshold, then the Company shall include in any such registration:

(i) If the registration is undertaken for the Company's account: (A) first, the Common Stock or other securities that the Company desires to sell that can be sold without exceeding the Maximum Threshold, and (ii) second, to the extent that the Maximum Threshold has not been reached under the foregoing clause (A), the Registrable Securities and the Common Stock or other securities proposed to be sold for the account of other Persons that the Company is obligated to register pursuant to any written contractual piggyback registration rights with such Persons and that can be sold without exceeding the Maximum Threshold (pro rata in accordance with the number of Registrable Securities and Common Stock or other securities which such Holders and other Persons have requested be included in such underwritten offering, regardless of the number of Registrable Securities and Common Stock or other securities held by each such Holder or other Person), and

(ii) If the registration is a "demand" registration undertaken at the demand of one or more Persons other than the Company and any Holder, (A) first, the Common Stock or other securities for the account of such demanding Persons that can be sold without exceeding the Maximum Threshold; (B) second, to the extent that the Maximum Threshold has not been reached under the foregoing clause (A), the Common Stock or other securities that the Company desires to sell that can be sold without exceeding the Maximum Threshold; and (C) third, to the extent that the Maximum Threshold has not been reached under the foregoing clauses (A) and (B), the Registrable Securities and the Common Stock or other securities proposed to be sold for the account of other Persons that the Company is obligated to register pursuant to any written contractual piggyback registration rights with such Persons and that can be sold without exceeding the Maximum Threshold (pro rata in accordance with the number of Registrable Securities and Common Stock or other securities which such Holders and other Persons have requested be included in such underwritten offering, regardless of the number of Registrable Securities and Common Stock or other securities held by each such Holder or other Person).

(c) Selection of Underwriters. If any Piggyback Registration is an underwritten primary offering, the investment banker(s) and manager(s) for the offering shall be selected by the Company.

3. Market Standoff Agreement.

(a) The Company (i) shall not effect any public sale or distribution of its equity securities, or any securities convertible into or exchangeable or exercisable for such securities, during the period beginning on the date the Company receives a request for an underwritten offering from any Holder and continuing until sixty (60) days after the commencement of an underwritten offering, unless the underwriters managing the registered public offering otherwise agree after consultation with a Majority-in-Interest, and (ii) shall cause each executive officer and director of the Company and each holder of its Common Stock, or any securities convertible into or exchangeable or exercisable for such Common Stock, purchased from the Company at any time after the date of this Agreement (other than in a registered public offering) to agree not to effect any public sale or distribution (including sales pursuant to Rule 144 under the Securities Act) of any such securities during such period (except as part of such underwritten registration, if otherwise permitted), unless the underwriters managing the registered public offering otherwise agree.

(b) Each Holder of Registrable Securities agrees that in connection with any public offering of the Company's equity securities, or any securities convertible into or exchangeable or exercisable for such securities, and upon the request of the managing underwriter(s) in such offering, such Holder shall not, without the prior written consent of such managing underwriter(s), during the period commencing on the date that is ten (10) days prior to the consummation of such offering and continuing until sixty (60) days after the commencement of an underwritten offering, (i) offer, pledge, sell, contract to sell, grant any option or contract to purchase, purchase any option or contract to sell, hedge the beneficial ownership of or otherwise dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into, exercisable for or exchangeable for shares of Common Stock (whether such shares or any such securities are then owned by the Holder or are thereafter acquired), or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of such securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing provisions of this Section 3(b) shall not apply to sales of Registrable Securities to be included in such offering pursuant to Sections 1 and 2, and shall be applicable to the holders of Registrable Securities only if all executive officers and directors of the Company and each holder of its Common Stock, or any securities convertible into or exchangeable or exercisable for such Common Stock, purchased from the Company at any time after the date of this Agreement are subject to the same restrictions. Each holder of Registrable Securities agrees to execute and deliver such other agreements as may be reasonably requested by the Company or the managing underwriter which are consistent with the foregoing or which are necessary to give further effect thereto. Notwithstanding anything to the contrary contained in this Section 3(b), each holder of Registrable Securities shall be released, pro rata, from any lock-up agreement entered into pursuant to this Section 3(b) in the event and to the extent that the managing underwriter or the Company permit any discretionary waiver or termination of the restrictions of any lock-up agreement pertaining to any executive officer, director or other holder of Common Stock.

4. Registration Procedures.

(a) Whenever the Holder has requested that any Registrable Securities be registered pursuant to this Agreement, the Company shall use commercially reasonable efforts to effect the registration and the sale of such Registrable Securities in accordance with the Holder's intended method of disposition thereof, and pursuant thereto the Company shall:

(i) (A) prepare and file with the Securities and Exchange Commission a Registration Statement with respect to such Registrable Securities as soon as reasonably practicable, but in any event within twenty (20) days, if a Short-Form Registration, and thirty (30) days, if a Long-Form Registration, following the date of a demand for registration pursuant to Section 1(a) or Section 1(b) of this Agreement, as applicable, and (B) use commercially reasonable efforts to cause such Registration Statement (1) to become effective as soon as practicable, and in any event within fifteen (15) days, if the Securities and Exchange Commission indicates it will not review the Registration Statement, and ninety (90) days, if the Securities and Exchange Commission indicates it will review the Registration Statement, following the date of filing such Registration Statement (provided that before filing a Registration Statement or prospectus or any amendments or supplements thereto, the Company shall furnish to one counsel selected by Holders of a majority of the Registrable Securities proposed to be included therein copies of all such documents proposed to be filed, which documents shall be subject to the review and comment of such counsel) and (2) to remain effective and in compliance with the provisions of the Securities Act until all Registrable Securities (and any other securities, if applicable) covered by such Registration Statement have been disposed of in accordance with the intended method(s) of distribution set forth in such Registration Statement or such securities have been withdrawn;

(ii) respond to written comments received from the Securities and Exchange Commission upon a review of any Registration Statement in a timely manner;

(iii) promptly notify each Holder of the effectiveness of each Registration Statement filed hereunder; by 9:30 a.m. (New York time) on the second Business Day following such effectiveness, file with the Securities and Exchange Commission in accordance with Rule 424 under the Securities Act the final prospectus to be used in connection with sales pursuant to such Registration Statement; and prepare and file with the Securities and Exchange Commission such amendments and supplements to such Registration Statement and the prospectus used in connection therewith, and otherwise take such actions, as may be necessary to keep such Registration Statement effective until the earlier of (A) the date as of which each Holder may sell all of the Registrable Securities covered by such Registration Statement pursuant to Rule 144 under the Securities Act without limitation, restriction or condition thereunder, and (B) the date on which all of such Registrable Securities have been disposed of by each Holder, and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement during such period in accordance with the intended methods of disposition by the sellers thereof set forth in such Registration Statement;

(iv) promptly furnish to each Holder such number of copies of such Registration Statement, each amendment and supplement thereto, the prospectus included in such Registration Statement (including each preliminary prospectus) and such other documents as the Holders may reasonably request in order to facilitate the disposition of the Registrable Securities owned by each Holder;

(v) if applicable, use commercially reasonable efforts to register or qualify the shares covered by such Registration Statement under such other securities or blue sky laws of such jurisdictions as each Holder shall reasonably request and do any and all other acts and things which may be reasonably necessary or advisable to enable each Holder to consummate the disposition in such jurisdictions of the Registrable Securities owned by such Holder (provided that the Company shall not be required to (A) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this subparagraph, (B) subject itself to taxation in any such jurisdiction or (C) consent to general service of process in any such jurisdiction);

(vi) notify each Holder at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event as a result of which the prospectus included in such Registration Statement contains an untrue statement of a material fact or omits any fact necessary to make the statements therein not misleading, and, as expeditiously as possible following the happening of such event, prepare a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not contain an untrue statement of a material fact or omit to state any fact necessary to make the statements therein not misleading;

(vii) without limiting any obligations of the Company under the Purchase Agreements, use its commercially reasonable efforts to (x) cause all such Registrable Securities to be listed on each securities exchange on which similar securities issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange or (y) if such listing is not then permitted, or no similar securities issued by the Company are then so listed, secure a designation and quotation of all of the Registrable Securities covered by each Registration Statement on the OTC Bulletin Board;

(viii) provide a transfer agent and registrar for all such Registrable Securities not later than the effective date of such Registration Statement;

(ix) enter into such customary agreements (including underwriting agreements in customary form) and take all such other actions as the Holders or the underwriters, if any, reasonably request in order to expedite or facilitate the disposition of such Registrable Securities (including effecting a stock split or a combination of shares);

(x) make available for inspection by any underwriter participating in any disposition pursuant to such Registration Statement and any attorney, accountant or other agent retained by any such seller or underwriter, all financial and other records, pertinent corporate documents and properties of the Company, and cause the Company's officers, directors, employees and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such Registration Statement;

(xi) otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the Securities and Exchange Commission, and make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve (12) months beginning with the first day of the Company's first full calendar quarter after the effective date of the Registration Statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder, and which requirement will be deemed satisfied if the Company timely files complete and accurate information on Forms 10-Q and 10-K and Current Reports on Form 8-K under the Exchange Act and otherwise complies with Rule 158 under the Securities Act;

(xii) in the event of the issuance of any stop order suspending the effectiveness of a Registration Statement, or of any order suspending or preventing the use of any related prospectus or suspending the qualification of any Common Stock included in such Registration Statement for sale in any jurisdiction, the Company shall promptly notify each Holder and use commercially reasonable efforts promptly to obtain the withdrawal of such order;

(xiii) use commercially reasonable efforts to cause such Registrable Securities covered by such Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the Holders thereof to consummate the disposition of such Registrable Securities;

(xiv) permit any Holder who, in the reasonable judgment of the Company upon the advice of counsel, might be deemed to be an underwriter or controlling person of the Company, and, if applicable, any underwriter, a cold comfort letter from the Company's independent public accountants in customary form and covering such matters of the type customarily covered by cold comfort letters as the Holders of a majority of the Registrable Securities being sold reasonably request (provided that such Registrable Securities constitute at least ten percent (10%) of the securities covered by such Registration Statement); and

(xv) cooperate with each Holder and any broker or dealer through which any such Holder proposes to sell its Registrable Securities in effecting a filing with FINRA pursuant to FINRA Rule 5110 as requested by such Holder.

(b) Each Holder that requested that any Registrable Securities be registered pursuant to this Agreement shall deliver to the Company such requisite information with respect to itself and its Registrable Securities as the Company may reasonably request for inclusion in the Registration Statement (and the prospectus included therein) as is necessary to comply with all applicable rules and regulations of the Securities and Exchange Commission, and that it will promptly notify the Company of any material changes in the information set forth in the Registration Statement furnished by or regarding the Holder or its plan of distribution.

(c) The Holders shall not effect sales of the shares covered by the Registration Statement (i) prior to the withdrawal of any stop order suspending the effectiveness of the Registration Statement, or of any order suspending or preventing the use of any related prospectus or suspending the registration or qualification of any Registrable Securities included in the Registration Statement for sale in any jurisdiction where such shares had previously been registered or qualified or (ii) after receipt of facsimile or other written notice from the Company instructing such Holders to suspend sales to permit the Company to correct or update the Registration Statement or prospectus until such Holder receives copies of a supplemented or amended prospectus that corrects the misstatement(s) or omission(s) referred to above and receives notice that any required post-effective amendment has become effective. Such Holder agrees that it will immediately discontinue offers and sales of Registrable Securities under the Registration Statement until such Holder receives copies of a supplemented or amended prospectus that corrects the misstatement(s) or omission(s) referred to above and receives notice that any post-effective amendment has become effective.

(d) Notwithstanding anything herein to the contrary, the Company shall have the right to suspend the use of a Registration Statement for a period of not greater than forty-five (45) consecutive days and for not more than ninety (90) days in any twelve (12) month period ("Blackout Period"), if, in the good faith opinion of the Board of Directors of the Company, after consultation with counsel, material, nonpublic information exists, including without limitation the proposed acquisition or divestiture of assets by the Company, a strategic alliance or a financing transaction involving the Company or the existence of pending material corporate developments, the public disclosure of which would be necessary to cause the Registration Statement to be materially true and to contain no material misstatements or omissions, and in each such case, where, in the good faith opinion of the Board of Directors, such disclosure would be reasonably likely to have a material adverse effect on the Company or on the proposed transaction. The Company must give the Holders notice promptly upon knowledge that a Blackout Period (without indicating the nature of such Blackout Period) may occur and prompt written notice if a Blackout Period will occur and such notices must be acknowledged in writing by the Investors. Upon the conclusion of a Blackout Period the Company shall provide the Holder written notice that the Registration Statement is again available for use.

5. Registration Expenses. All expenses (other than Selling Expenses) incident to the Company's performance of or compliance with this Agreement, including without limitation all registration and filing fees, fees and expenses of compliance with securities or blue sky laws, printing expenses, messenger and delivery expenses, fees and disbursements of custodians, and fees and disbursements of counsel for the Company and independent certified public accountants, underwriters (excluding fees, discounts and commissions) and other persons retained by the Company, and reasonable fees and expenses of one counsel for the Holders in connection with any Demand Registration or Piggyback Registration (all such expenses being herein called "**Registration Expenses**"), shall be borne by the Company. The Company shall not be liable for any Selling Expenses. As used herein, the term "Selling Expenses" shall mean, collectively, any selling commissions, discounts or brokerage fees. Selling Expenses shall be borne by the respective seller thereof, in proportion to the respective number of shares of Registrable Securities sold by each of them.

6. Holder's Obligations. Each Holder covenants and agrees that, in the event the Company informs such Holder in writing that it does not satisfy the conditions specified in Rule 172 and, as a result thereof, such seller is required to deliver a prospectus in connection with any disposition of Registrable Securities, it will comply with the prospectus delivery requirements of the Securities Act as applicable to it (unless an exemption therefrom is available) in connection with sales of Registrable Securities pursuant to the Registration Statement, and shall sell the Registrable Securities only in accordance with a method of distribution described in the Registration Statement.

7. Indemnification.

(a) The Company shall indemnify, to the extent permitted by applicable law, each Holder, its officers, directors, partners, managers, members, investment managers, employees, agents and representatives, and each Person who controls each Holder (within the meaning of Section 15 the Securities Act and Section 20 of the Exchange Act) against all losses, claims, damages, liabilities and expenses (including reasonable legal expenses) arising out of or based upon (i) any untrue or alleged untrue statement of material fact contained in (or incorporated by reference therein) any Registration Statement, free writing prospectus, prospectus or preliminary prospectus, filing under any state securities (or blue sky) law or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any other law, including any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to a Registration Statement, or (iii) any breach or violation of this Agreement; provided, however, that the Company shall not be liable to any such indemnified party in any such case to the extent that (A) such claim arises out of or is based upon any untrue statement or alleged untrue statement of a material fact contained in (or incorporated by reference therein) any Registration Statement, free writing prospectus, prospectus or preliminary prospectus, filing under any state securities (or blue sky) law or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact in reliance upon and in conformity with information furnished to the Company by or on behalf of such Holder or its representatives by or on behalf of such Holder expressly for use therein, or (B) such claim is related to the use by a Holder or underwriter, if any, of an outdated or defective prospectus after such party has received written notice from the Company that such prospectus is outdated or defective. In connection with an underwritten offering, the Company shall indemnify such underwriters, their officers and directors and each Person who controls such underwriters (within the meaning of the Securities Act) to the same extent as provided above with respect to the indemnification of the holders of Registrable Securities.

(b) Each Holder shall, severally and not jointly, to the extent permitted by applicable law, indemnify the Company, its directors and officers and each Person who controls the Company (within the meaning of Section 15 the Securities Act and Section 20 of the Exchange Act), to the fullest extent permitted by applicable law, against any losses, claims, damages, liabilities and expenses (including reasonable legal expenses) arising out of or based upon any untrue or alleged untrue statement of material fact contained in (or incorporated by reference therein) the Registration Statement, free writing prospectus, prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements herein not misleading, but only to the extent that such untrue statement or omission was made in reliance upon and in conformity with any information furnished in writing to the Company by such Holder or its representatives by or on behalf of such Holder expressly for use therein; provided that each Holder shall be liable under this Section 6(b) of this Agreement (and otherwise) for only up to the amount of net amount of proceeds actually received by each Holder as a result of the sale of Registrable Securities pursuant to the Registration Statement giving rise to such indemnification obligation.

(c) Any Person entitled to indemnification hereunder shall (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided that the failure to give prompt notice shall not impair any Person's right to indemnification hereunder to the extent such failure has not prejudiced the indemnifying party) and (ii) unless, in the Company's reasonable judgment, a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. After written notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim, the indemnifying party shall not be subject to any liability for any settlement subsequently made by the indemnified party without its consent (but such consent shall not be unreasonably withheld, conditioned or delayed). An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of the Company, a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim, in which case the indemnifying party shall be liable for the fees and expenses of one additional firm of attorneys with respect to the indemnified parties. The indemnifying party shall keep the indemnified party reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect to such claim. No indemnifying party shall, without the prior written consent of the indemnified party, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a full release from all liability with respect to such claim.

(d) The indemnification provided for under this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director, partner, manager, member, investment manager, employee, agent, representative or controlling Person of such indemnified party and shall survive the transfer of Registrable Securities. The indemnity agreements contained herein shall be in addition to (i) any cause of action or similar right of the indemnified party against the indemnifying party or others, and (ii) any liabilities to which the indemnifying party may be subject pursuant to the law.

(e) If the indemnification provided for in this Section 7 of this Agreement is unavailable to or is insufficient to hold harmless an indemnified party under the provisions above in respect to any losses, claims, damages or liabilities referred to therein, then the indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities to the fullest extent permitted by law; provided, however, that: (i) no Person involved in the sale of Registrable Securities which Person is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) in connection with such sale shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation, and (ii) contribution by each Holder shall be limited in amount to the net amount of proceeds actually received by such Holder from the sale of such Registrable Securities pursuant to the applicable Registration Statement, less the amount of any damages that such Holder has otherwise been required to pay in connection with such sale.

8. Reports under the Exchange Act. With a view to making available to each Holder the benefits of Rule 144 under the Securities Act or any other similar rule or regulation of the Securities and Exchange Commission that may at any time permit a Holder to sell securities of the Company to the public without registration ("**Rule 144**"), at all times during which there are Registrable Securities outstanding that have not been previously (i) sold to or through a broker or dealer or underwriter in a public distribution or (ii) sold in a transaction exempt from the registration and prospectus delivery requirements of the Securities Act under Section 4(1) thereof, in the case of either clause (i) or clause (ii) in such a manner that, upon the consummation of such sale, all transfer restrictions and restrictive legends with respect to such shares are removed upon the consummation of such sale, the Company agrees to use its commercially reasonable efforts to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144;

(b) file with the Securities and Exchange Commission in a timely manner all reports and other documents required of the Company under the Exchange Act, so long as the Company remains subject to such requirements and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

(c) furnish to each Holder so long as such Holder owns Registrable Securities, promptly upon request, (i) a written statement by the Company, if true, that it has complied with the reporting requirements of Rule 144 and the Exchange Act, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested to permit each Holder to sell such securities pursuant to Rule 144 without registration.

9. Preservation of Rights. Without the prior written consent of a Majority-in-Interest, the Company shall not, on or after the date of this Agreement, (i) grant any registration rights to third parties which are more favorable than or inconsistent with the rights granted hereunder, or (ii) enter into any agreement, take any action, or permit any change to occur, with respect to its securities that is inconsistent with or violates or subordinates the rights expressly granted to each Holder in this Agreement, such as (A) affecting the ability of each Holder to include the Registrable Securities in a registration undertaken pursuant to this Agreement or (B) affecting the marketability of such Registrable Securities in any such registration (including effecting a stock split or a combination of shares).

10. Definitions.

"**Affiliate**" means (i) any Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such other Person, (ii) any executive officer or general partner of such other Person and (iii) any legal entity for which such Person acts as executive officer or general partner, and "**control**" for these purposes means the direct or indirect power to direct or cause the direction of the management and policies of another Person, whether by operation of law or regulation, through ownership of securities, as trustee or executor or in any other manner.

"**Business Day"** means any day on which the principal offices of the Securities and Exchange Commission in Washington, DC are open to accept filings.

"**Commission Guidance**" means (i) any publicly available written guidance or rule of general applicability of the Securities and Exchange Commission staff or (ii) written comments, requirements or requests of the Securities and Exchange Commission staff to the Company in connection with the review of a Registration Statement.

"**Common Stock**" means the common stock, par value $0.0001 per share, of the Company, and includes all securities of the Company issued or issuable with respect to such securities by way of a stock split, stock dividend, or in exchange for or upon conversion of such shares or otherwise in connection with a combination of shares, distribution, recapitalization, merger, consolidation, or other corporate reorganization.

"**Demand Registration**" means a Short-Form Registration or a Long-Form Registration.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations promulgated thereunder.

"**FINRA**" means the Financial Industry Regulatory Authority, and any agency or authority succeeding to the functions thereof.

"**Holder**" means (i) each Stockholder in its capacity as a holder of record of Registrable Securities, (ii) any Affiliate of a Stockholder that is a direct or indirect transferee of Registrable Securities from a Stockholder or any subsequent Holder and (iii) any direct or indirect transferee of Registrable Securities from a Stockholder or any subsequent Holder.

"**Majority-in-Interest**" means Holders of more than fifty percent (50%) of the Registrable Securities.

"**Person**" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a governmental entity (or any department, agency or political subdivision thereof).

"**Registrable Securities**" means the Purchased Shares and the Common Stock that has been or will be issued upon exercise of the Warrants, together with any securities issued or issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing. For purposes of this Agreement, a Person shall be deemed to be a holder of Registrable Securities whenever such Person has the right to acquire such Registrable Securities (upon conversion or exercise, in connection with a transfer of securities or otherwise, but disregarding any restrictions or limitations upon the exercise of such right), whether or not such acquisition has actually been effected. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when (A) a Registration Statement covering such securities has been declared effective by the Securities and Exchange Commission and such securities have been disposed of pursuant to such effective Registration Statement, (B) such securities are sold under circumstances in which all of the applicable conditions of Rule 144 (or any similar provisions then in force) under the Securities Act are met, (C) the aggregate amount of such securities held by each Holder, together with all Affiliates of each such Holder and persons forming a "group" with each such Holder (within the meaning of Regulation 13D under the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations promulgated thereunder ("**Regulation 13D**")), consists of beneficial ownership (within the meaning of Regulation 13D) of less than 5.0% of the Common Stock of the Company and such securities are eligible for sale by each such Holder without registration pursuant to Rule 144 (or any similar provisions then in force) under the Securities Act without limitation thereunder on volume or manner of sale, (D) such securities are otherwise transferred and such securities may be resold without limitation or subsequent registration under the Securities Act, (E) such securities shall have ceased to be outstanding, or (F) the stock certificates or evidences of book-entry registration relating to such securities have had all restrictive legends removed.

"**Registration Statement**" means any registration statement of the Company which covers any of the Registrable Securities pursuant to the provisions of this Agreement, including the prospectus, amendments, and supplements to such Registration Statement, including post-effective amendments, all exhibits and all materials incorporated by reference in such Registration Statement.

"**Securities Act**" means the Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated thereunder.

"**Securities and Exchange Commission**" means the United States Securities and Exchange Commission, and any governmental body or agency succeeding to the functions thereof.

11. Miscellaneous.

(a) Remedies. Each Party shall be entitled to enforce its rights under any provision of this Agreement specifically to recover damages caused by reason of any breach of any provision of this Agreement and to exercise all other rights granted by applicable law. The Parties agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Agreement and that any Party may, in its sole discretion, apply to any court of law or equity of competent jurisdiction (without posting any bond or other security) for specific performance and for other injunctive relief in order to enforce or prevent violation of the provisions of this Agreement.

(b) Termination. All rights and obligations of the Company hereunder other than pursuant to Sections 5 and 7 hereof shall terminate on the date on which no Registrable Securities are outstanding.

(c) Amendments and Waivers. Except as otherwise provided herein, the provisions of this Agreement may be amended, modified or waived only upon the prior written consent of the Company, a Majority-in-Interest and any Holder that would be materially and disproportionately affected by such an amendment or waiver. The failure of any party to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of such party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

(d) Assignment; No Third Party Beneficiaries. This Agreement and the rights, duties and obligations of the Company hereunder may not be assigned or delegated by the Company in whole or in part. This Agreement and the rights, duties and obligations of the Holders hereunder may be freely assigned or delegated by such Holder in conjunction with and to the extent of any transfer of Registrable Securities. This Agreement and the provisions hereof shall be binding upon and shall inure to the benefit of each of the Parties and their respective permitted successors and assigns; provided, however, that no such transfer or assignment shall be binding upon or obligate the Company to any such assignee, and no such assignee shall be deemed a Holder hereunder, unless and until the Company shall have received written notice of such transfer or assignment as herein provided and a written agreement of the assignee to be bound by the provisions of this Agreement. This Agreement is not intended to confer any rights or benefits on any Persons that are not party hereto other than as expressly set forth in Section 7 and this Section 11(d).

(e) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

(f) Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each Party to this Agreement and delivered to the other Party, it being understood that all Parties need not sign the same counterpart. Signatures delivered by electronic methods shall have the same effect as signatures delivered in person.

(g) Descriptive Headings. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

(h) Governing Law; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the internal laws of New York applicable to parties residing in New York, without regard applicable principles of conflicts of law. Each Party irrevocably consents to the exclusive jurisdiction of any court located within New York County, New York, in connection with any matter based upon or arising out of this Agreement or the matters contemplated hereby and it agrees that process may be served upon it in any manner authorized by the laws of the State of New York for such Persons and waives and covenants not to assert or plead any objection which it might otherwise have to such jurisdiction and such process. EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE, IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (I) 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 EITHER OF SUCH WAIVERS, (II) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (III) IT MAKES SUCH WAIVERS VOLUNTARILY, AND (IV) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12(h).

(i) Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly delivered: (i) upon receipt if delivered personally; (ii) three (3) Business Days after being mailed by registered or certified mail, postage prepaid, return receipt requested; (iii) one (1) Business Day after it is sent by commercial overnight courier service; or (iv) upon transmission if sent via facsimile or electronic mail with confirmation of receipt to the Parties to this Agreement at the addresses set forth in the Purchase Agreements (or at such other address for a Party as shall be specified upon like notice).

(j) Rules of Construction. The Parties agree that they have each been represented by counsel during the negotiation, preparation and execution of this Agreement (or, if executed following the date hereof by counterpart, have been provided with an opportunity to review the Agreement with counsel) and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the Party drafting such agreement or document.

(k) Interpretation. This Agreement shall be construed in accordance with the following rules: (i) the terms defined in this Agreement include the plural as well as the singular; (ii) all references in the Agreement to designated “Sections” and other subdivisions are to the designated sections and other subdivisions of the body of this Agreement; (iii) pronouns of either gender or neuter shall include, as appropriate, the other pronoun forms; (iv) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision; and (v) the words “includes” and “including” are not limiting.

[*Remainder of page intentionally left blank. Signature Pages Follow.*]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written.

COMPANY:

BioScrip, Inc.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

STOCKHOLDERS:

ASSF IV AIV B HOLDINGS, L.P.

By: **ASSF IV AIV B HOLDINGS GP LLC**,
its general partner
By: **ASSF IV AIV B, L.P.**,
its sole member
By: **ASSF MANAGEMENT IV, L.P.**,
its general partner
By: **ASSF MANAGEMENT IV GP LLC**,
its general partner

By: /s/ Scott L. Graves
Name: Scott L. Graves
Title: Authorized Signatory

STOCKHOLDERS:

J.P. Morgan Securities LLC

By: /s/ Jeffrey L. Panzo
Name: Jeffrey L. Panzo
Title: Attorney in fact

STOCKHOLDERS:

Goldman Sachs & Co. LLC

By: /s/ Daniel Oneglia
Name: Daniel Oneglia
Title: Managing Director

STOCKHOLDERS:

Western Asset Middle Market Debt Fund Inc.
Western Asset Middle Market Income Fund Inc

By: Western Asset Management Company,
as its Investment Manager and Agent

By: /s/ Adam Wright
Name: Adam Wright
Title: Manager, U.S. Legal Affairs

Exhibit 10.1

EXECUTION VERSION

FIRST LIEN NOTE PURCHASE AGREEMENT

dated as of June 29, 2017

among

BIOSCRIP, INC.,
as Issuer,

THE PURCHASERS FROM TIME TO TIME PARTY HERETO,

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Collateral Agent

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FIRST LIEN NOTE PURCHASE AGREEMENT

THIS FIRST LIEN NOTE PURCHASE AGREEMENT (this "Agreement") is made and entered into as of June 29, 2017, by and among BIOSCRIP, INC., a Delaware corporation (the "Issuer"), the several financial institutions and purchasers from time to time party hereto (the "Purchasers"), and Wells Fargo Bank, National Association, in its capacity as collateral agent for itself and the Purchasers (the "Collateral Agent").

WITNESSETH:

WHEREAS, the Issuer has agreed to issue, and the Purchasers have severally (and not jointly) agreed to purchase from the Issuer, notes in the aggregate principal amount of $200,000,000 upon and subject to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Issuer, the Purchasers and the Collateral Agent agree as follows:

ARTICLE I

DEFINITIONS; CONSTRUCTION

Section 1.1 Definitions. In addition to the other terms defined herein, the following terms used herein shall have the meanings herein specified (to be equally applicable to both the singular and plural forms of the terms defined):

"ABDC" shall mean AmerisourceBergen Drug Corporation, a Delaware corporation.

"ABDC Obligations" shall mean all obligations of the Note Parties or any of their Subsidiaries owing to ABDC under the ABDC Prime Vendor Agreement and any other agreement, instrument, certificate or other document pursuant to which any Note Party or any Subsidiary of a Note Party grants (or purports to grant) in favor of ABDC a security interest in or a Lien on any property of such Note Party or such Subsidiary now or at any time hereafter to secure such obligations.

"ABDC Intercreditor Agreement" shall mean that certain Intercreditor Agreement dated as of the Closing Date by and between the Collateral Agent, the Second Lien Collateral Agent and ABDC, as amended, restated, supplemented or otherwise modified from time to time in accordance therewith and herewith.

"ABDC Lien" shall mean (a) initially, the Lien of ABDC on the Inventory and Accounts of the Issuer and its Subsidiaries 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 and (b) following the Issuer's compliance with Section 6 of Schedule 5.16, the Lien of ABDC on the Inventory acquired from ABDC pursuant to the ABDC Intercreditor Agreement and, in all events, subject to the provisions of the ABDC Intercreditor Agreement.

"ABDC Prime Vendor Agreement" shall mean that certain Prime Vendor Agreement dated as of July 1, 2009 by and among the Issuer and ABDC, as amended by that certain First Amendment dated as of March 25, 2010, that certain Second Amendment dated as of June 1, 2010, that certain Third Amendment dated as of August 1, 2010, that certain Fourth Amendment dated as of May 1, 2011, that certain Fifth Amendment dated as of January 1, 2012, that certain Sixth Amendment dated as of September 1, 2012, that certain Seventh Amendment dated as of December 1, 2012, and that certain Eighth Amendment dated as of April 1, 2013, and as the same may be further amended, restated, supplemented, waived, extended, refinanced, replaced or otherwise modified from time to time in a manner not prohibited by the ABDC Intercreditor Agreement.

"Account Control Agreement" shall mean any agreement by and among a Note Party, the Collateral Agent and a depositary bank or securities intermediary at which such Note Party maintains a Controlled Account, that, in each case, complies with all Requirements of Law and is otherwise in form and substance reasonably satisfactory to the Collateral Agent and the Required Purchasers.

"Accreditation" 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, Community Health Accreditation Program and URAC.

"Acquisition" shall mean (a) any Investment by the Issuer or any of its Subsidiaries in any other Person organized in the United States (with substantially all of the assets of such Person and its Subsidiaries located in the United States), pursuant to which such Person shall become a Subsidiary of the Issuer or any of its Subsidiaries or shall be merged with the Issuer or any of its Subsidiaries or (b) any acquisition by the Issuer or any of its Subsidiaries of the assets of any Person (other than a Subsidiary of the Issuer) that constitute all or substantially all of the assets of such Person or a division or business unit of such Person, whether through purchase, merger or other business combination or transaction (and substantially all of such assets, division or business unit are located in the United States). With respect to a determination of the amount of an Acquisition, such amount shall include all consideration (including the maximum amount of any earn-out or other deferred or contingent consideration and any Permitted Seller Financing in respect thereof) set forth in the applicable agreements governing such Acquisition as well as the principal amount of any Indebtedness assumed by any Note Party in connection therewith.

"Affiliate" shall mean, as to any Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Person; provided that the Purchasers shall be deemed not to be Affiliates of any Note Party. For the purposes of this definition, "Control" shall mean the power, directly or indirectly, to direct or cause the direction of the management and policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. For purposes of Section 7.7, "Control" shall also include the power, directly or indirectly, to vote 10% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of a Person. The terms "Controlled by" and "under common Control with" have the meanings correlative thereto.

"Anti-Corruption Law" shall mean any requirement of law related to bribery or anti-corruption, including the United States Foreign Corrupt Practices Act of 1977, as now and hereafter in effect, or any successor statute.

"Anti-Terrorism Law" shall mean any requirement of law related to money laundering or financing terrorism, including the Patriot Act, The Currency and Foreign Transactions Reporting Act (also known as the "Bank Secrecy Act", 31 U.S.C. §§5311-5330 and 12 U.S.C. §§1818(s), 1820(b) and 1951-1959), Trading With the Enemy Act (50 U.S.C. §1 et seq., as amended), Executive Order 13224 (effective September 24, 2001) and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended), in each case, as now and hereafter in effect, or any successor statutes.

"Applicable Funding Office" shall mean, with respect to any Purchaser, the office or offices of such Purchaser specified as its "Funding Office" beneath its name on the applicable signature page hereto, or such other office or offices of such Purchaser as it may from time to time notify the Issuer and the Collateral Agent.

"Applicable Margin" shall mean, as of any date, with respect to all Notes outstanding on such date, 6.00% *per annum* with respect to Base Rate Notes and 7.00% *per annum* with respect to Eurodollar Notes.

"Applicable Premium" shall mean the greater of (I) 4.0% of the principal amount of the Notes being prepaid or repaid, as applicable, and (II) the excess of (A) the present value of all remaining required interest payments to the second anniversary of the Closing Date (using the LIBOR Rate that is determined for a one-month Interest Period commencing on the date of such prepayment and assuming such LIBOR Rate remains the same for the entire period from the date of such prepayment to the second anniversary of the Closing Date) and principal payments due on the principal amount of the Notes being prepaid or repaid, as applicable, plus the Prepayment Premium provided for pursuant to clause (b) of the definition of Prepayment Premium on such principal amount being prepaid or repaid, as applicable, in each case assuming a prepayment date of the second anniversary of the Closing Date, computed using a discount rate equal to the Treasury Rate plus 50 basis points over (B) the principal amount of the Notes being prepaid or repaid, as applicable. For purposes of this definition, "Treasury Rate" means the rate per annum equal to the yield to maturity at the time of computation of the United States of America Treasury securities with a constant maturity most nearly equal to the period from such date of prepayment or repayment, as applicable, to the second anniversary of the Closing Date; provided, however, that if the period from such date of prepayment or repayment, as applicable, to the second anniversary of the Closing Date is not equal to the constant maturity of a United States of America Treasury security for which a weekly average yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States of America Treasury securities for which such yields are given, except that if the period from such date of prepayment or repayment, as applicable, to the second anniversary of the Closing Date is less than one year, the weekly average yield on actually traded United States of America Treasury securities adjusted to a constant maturity of one year shall be used.

"Approved Fund" shall mean any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (i) a Purchaser, (ii) an Affiliate of a Purchaser or (iii) an entity or an Affiliate of an entity that administers or manages a Purchaser.

"Assignment and Assumption" shall mean an assignment and assumption entered into by a Purchaser and an assignee (with the consent of any party whose consent is required by Section 10.4(b)), substantially in the form of Exhibit A attached hereto or any other form approved by the Required Purchasers.

"Available Amount" shall mean, at any time (the "Reference Date") an amount, not less than zero, equal to the sum of (a) the cumulative portion of Excess Cash Flow for the period commencing on the Closing Date and ending on the Reference Date which has not been and is not required to be used to prepay the Obligations pursuant to Section 2.9(c) minus (b) the aggregate amount of any cash dividends, distributions, and share repurchases made by the Issuer pursuant to Section 7.5(g) after the Closing Date and prior to the Reference Date.

"Bail-In Action" shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"Bail-In Legislation" shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Bank Product Obligations" shall mean, collectively, all monetary obligations and other liabilities of any Note Party to any Bank Product Provider arising with respect to any Bank Products.

"Bank Product Provider" shall mean any Person that, at the time it provides any Bank Product to any Note Party, (i) is a Purchaser or an Affiliate of a Purchaser and (ii) has provided prior written notice to the Collateral Agent which has been acknowledged by the Issuer of (x) the existence of such Bank Product, (y) the maximum dollar amount of obligations arising thereunder (the "Bank Product Amount") and (z) the methodology to be used by such parties in determining the obligations under such Bank Product from time to time. In no event shall any Bank Product Provider acting in such capacity be deemed a Purchaser for purposes hereof to the extent of and as to Bank Products except that each reference to the term "Purchaser" in Article IX and Section 10.3(b) shall be deemed to include such Bank Product Provider and in no event shall the approval of any such person in its capacity as Bank Product Provider be required in connection with the release or termination of any security interest or Lien of the Collateral Agent. The Bank Product Amount may be changed from time to time upon written notice to the Collateral Agent by the applicable Bank Product Provider. No Bank Product Amount may be established at any time that a Default or Event of Default exists.

"Bank Products" shall mean any of the following services provided to any Note Party by any Bank Product Provider: (a) any treasury or other cash management services, including deposit accounts, automated clearing house (ACH) origination and other funds transfer, depository (including cash vault and check deposit), zero balance accounts and sweeps, return items processing, controlled disbursement accounts, positive pay, lockboxes and lockbox accounts, account reconciliation and information reporting, payables outsourcing, payroll processing, trade finance services, investment accounts and securities accounts, and (b) card services, including credit cards (including purchasing cards and commercial cards), prepaid cards, including payroll, stored value and gift cards, merchant services processing, and debit card services.

"Base Rate" shall mean, for any day, a floating rate per annum equal to the greater of (x) the higher of (i) the per annum rate publicly quoted from time to time by The Wall Street Journal as the "Prime Rate" in the United States (or, if The Wall Street Journal ceases quoting a base rate of the type described, either (a) the per annum rate quoted as the base rate on such corporate loans in a different national publication as selected by the Required Purchasers or (b) the highest per annum rate of interest published by the Federal Reserve Board in Federal Reserve statistical release H.15 (519) entitled "Selected Interest Rates" as the Bank prime loan rate or its equivalent), and (ii) the Federal Funds Rate plus fifty (50) basis points per annum; provided that if the Federal Funds Rate is less than zero on such day, it shall be deemed to be zero hereunder, and (y) the sum of the LIBOR Rate calculated for each such day based on an Interest Period of one (1) month determined two (2) Business Days prior to the first day of such proposed Interest Period (not to be less than 1.00%) plus 1.00% per annum. Each change in any interest rate based upon the Base Rate shall take effect at the time of such change in the Base Rate.

"Beneficial Owner" shall mean, with respect to any amount paid hereunder or under any other Note Document, the Person that is the beneficial owner, for U.S. federal income tax purposes, of such payment.

"BioScrip Facilities" shall mean any facility owned, leased or operated by the Issuer or any of its Subsidiaries.

"Business Day" shall mean any day other than (i) a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close and (ii) if such day relates to an Issuance of, a payment or prepayment of principal or interest on, a conversion of or into, or an Interest Period for, a Eurodollar Note or a notice with respect to any of the foregoing, any day on which banks are not open for dealings in Dollar deposits in the London interbank market.

"Capital Expenditures" shall mean, for any period, without duplication, (i) the additions to property, plant and equipment and other capital expenditures of the Issuer and its Subsidiaries that are (or would be) set forth on a consolidated statement of cash flows of the Issuer for such period prepared in accordance with GAAP and (ii) Capital Lease Obligations incurred by the Issuer and its Subsidiaries during such period.

"Capital Lease Obligations" of any Person shall mean all obligations of such Person to pay rent or other amounts under any lease (or other arrangement conveying the right to use) of 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 Stock" shall mean all shares, options, warrants, general or limited partnership interests, membership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or nonvoting, including common stock, preferred stock or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Exchange Act).

"Cash Equivalents" shall mean (i) direct obligations issued by, or unconditionally guaranteed by, the United States government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition; (ii) certificates of deposit, time deposits, eurodollar time deposits or overnight bank deposits having maturities of one year or less from the date of acquisition issued by any commercial bank organized under the laws of the United States or any state thereof having combined capital and surplus of not less than $500,000,000; (iii) commercial paper of an issuer rated at least A-1 by S&P or P-1 by Moody's, or carrying an equivalent rating by a nationally recognized rating agency if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within one year from the date of acquisition; (iv) fully collateralized repurchase obligations of any commercial bank satisfying the requirements of clause (ii) of this definition, having a term of not more than thirty days with respect to securities issued or fully guaranteed or insured by the United States government; (v) marketable securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory, the securities of which state, commonwealth, territory, political subdivision or taxing authority (as the case may be) are rated at least A-1 by S&P or P-1 by Moody's; (vi) securities with maturities of one year or less from the date of acquisition backed by standby letters of credit issued by any Purchaser or any commercial bank satisfying the requirements of clause (ii) of this definition; (vii) shares of money market mutual or similar funds which invest exclusively in assets satisfying the requirements of any of clauses (i) through (vi) of this definition; and (viii) other short-term investments utilized by Foreign Subsidiaries in accordance with the normal investment practices for cash management in investments of a type analogous to the foregoing.

"CFC Subsidiary" shall mean any Subsidiary of the Issuer that is organized under the laws of the United States or any state or district thereof and substantially all of the assets of which consist (directly, or indirectly through one or more disregarded entities) of Capital Stock of one or more Subsidiaries of the Issuer organized under the laws of a jurisdiction other than the United States or any state or district thereof.

"Change in Control" shall mean the occurrence of one or more of the following events: (i) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or "group" (within the meaning of the Exchange Act and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof, but excluding any employee benefit plan of such person or its subsidiaries, or any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of such plan) of 35% or more of the outstanding shares of the voting equity interests (with equivalent economic interests) of the Issuer; (ii) during any period of 24 consecutive months, a majority of the members of the Governing Body of the Issuer cease to be composed of individuals who are Continuing Directors; (iii) the acquisition by contract or otherwise by any Person or two or more Persons acting in concert, or the entering into of a contract or arrangement by any Person or two or more Persons acting in concert that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, beneficially or of record, a controlling influence over the management or policies of the Issuer, or control over 35% or more of the outstanding shares of the voting equity interests (with equivalent economic interests) of the Issuer, (iv) the Issuer shall cease to directly or indirectly own, free and clear of all Liens (except those created under the Collateral Documents, the Second Lien Collateral Documents and non-consensual Liens that arise by operation of law), 100% of the outstanding Capital Stock of each of its Subsidiaries (whether acquired or formed before or after the Closing Date), and all voting rights and economic interests with respect thereto, other than pursuant to a transaction that is not prohibited hereunder, or (v) the occurrence of a "Change in Control" (or any comparable term) under, and as defined in, any document or agreement evidencing any Material Indebtedness.

"Change in Law" shall mean (i) the adoption of any applicable law, rule or regulation after the date of this Agreement, (ii) any change in any applicable law, rule or regulation, or any change in the interpretation, implementation or application thereof, by any Governmental Authority after the date of this Agreement, or (iii) compliance by any Purchaser (or its Applicable Funding Office) (or, for purposes of Section 2.15(b), by the Parent Company of such Purchaser, if applicable) 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; provided that for purposes of this Agreement, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Closing Date" shall mean the date on which the conditions precedent set forth in Section 3.1 have been satisfied or waived in accordance with Section 10.2 and the Notes are issued by the Issuer and purchased by the Purchasers.

"CMS" shall mean the Centers for Medicare and Medicaid Services, formerly known as the Health Care Financing Administration or HCFA, and any successor thereto.

"Code" shall mean the Internal Revenue Code of 1986, as amended and in effect from time to time, any successor statute, and the regulations promulgated and rulings issued thereunder.

"Collateral" shall mean all "Collateral" as defined in any Collateral Document and shall include the Mortgaged Properties, but shall exclude any Excluded Property.

"Collateral Access Agreement" shall mean each landlord waiver or bailee agreement granted to, and in form and substance reasonably acceptable to, the Collateral Agent and the Required Purchasers.

"Collateral Agent" shall have the meaning set forth in the introductory paragraph hereof.

"Collateral Documents" shall mean, collectively, the Guaranty and Security Agreement, any Real Estate Documents, the Account Control Agreements, the Government Receivables Account Agreements, the Information and Collateral Disclosure Certificate, all Copyright Security Agreements, all Patent Security Agreements, all Trademark Security Agreements, all Collateral Access Agreements, all assignments of key man life insurance policies and all other instruments and agreements now or hereafter securing or perfecting the Liens securing the whole or any part of the Obligations or any Guarantee thereof, all UCC financing statements, fixture filings and stock powers, and all other documents, instruments, agreements and certificates executed and delivered by any Note Party to the Collateral Agent and the Purchasers in connection with the foregoing.

"Commitment" shall mean, with respect to each Purchaser, the obligation of such Purchaser to purchase a Note hereunder on the Closing Date, in an aggregate principal amount not exceeding the amount set forth with respect to such Purchaser on Schedule I. The aggregate principal amount of all Purchasers' Commitments as of the Closing Date is $200,000,000.

"Commitment Letter" shall mean that certain Commitment Letter, dated as of June 7, 2017, among Ares Management LLC (on behalf of one or more of its affiliated funds or accounts), each of the accounts listed on the signature pages thereto that is managed by Western Asset Management Company, J.P. Morgan Securities LLC and Goldman Sachs & Co. LLC and agreed and accepted by the Issuer.

"Commodity Exchange Act" shall mean the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Company Accreditation" shall have the meaning set forth in Section 4.20(c).

"Company Reimbursement Approval" shall have the meaning set forth in Section 4.22(a).

"Company Regulatory Filings" shall have the meaning set forth in Section 4.20(e).

"Competitor" shall mean each bona fide operating competitor directly engaged in the Issuer's line of business and set forth on Schedule II.

"Compliance Certificate" shall mean a certificate from a Responsible Officer of the Issuer in substantially the form of, and containing the certifications set forth in, the certificate attached hereto as Exhibit 5.1(c).

"Consolidated Covenant Testing Net Leverage Ratio" shall mean, as of any date, the ratio of (i) Consolidated Total Net Debt (other than any Consolidated Junior Indebtedness, any Subordinated Debt and any unsecured Indebtedness, in each case, not prohibited hereunder but, notwithstanding the foregoing, including all Permitted Seller Financing) as of such date to (ii) Consolidated EBITDA for the four consecutive Fiscal Quarters ending on (A) with respect to calculations of the Consolidated Covenant Testing Net Leverage Ratio required by Article VI, such date and (B) with respect to all other calculations of the Consolidated Covenant Testing Net Leverage Ratio, the last day of the most recent Fiscal Quarter prior to such date for which financial statements have been delivered (or were required to be delivered) pursuant to Section 5.1(a) or 5.1(b), as applicable. The Consolidated Covenant Testing Net Leverage Ratio shall be calculated on a Pro Forma Basis.

"Consolidated EBITDA" shall mean, for the Issuer and its Subsidiaries for any period, an amount equal to the sum of (i) Consolidated Net Income for such period plus (ii) to the extent deducted in determining Consolidated Net Income for such period, and in each case without duplication and as determined in accordance with GAAP, (a) Consolidated Interest Expense, (b) income tax expense (including any franchise taxes imposed in lieu of income taxes and taxes based on profit or capital) determined on a consolidated basis, (c) depreciation and amortization (including amortization of intangibles and goodwill) determined on a consolidated basis, (d) fees, out of pocket costs and expenses incurred in connection with dispositions, Investments, issuances of Indebtedness (including the Second Lien Obligations) or Capital Stock and Capital Expenditures (whether or not successfully consummated) to the extent not prohibited hereunder, (e) extraordinary or non-recurring charges, (f) severance costs, retention bonuses and other similar compensation payments made to employees of any Note Party, (g) non-cash charges (including deferred compensation, stock option or employee benefits-based and other equity-based compensation expenses, in each case, made to employees, consultants and advisors of any Note Party), (h) transaction expenses incurred in connection with this Agreement and the transactions contemplated hereby, (i) restructuring charges, (j) integration and relocation expenses determined and calculated in each case on a basis not inconsistent with historical practice, (k) prepayment expense, including fees and premiums, incurred in connection with the retirement of existing indebtedness of the Issuer and its Subsidiaries, (l) fees and expenses paid to the Collateral Agent and the Purchasers hereunder and to the Second Lien Collateral Agent and the Second Lien Purchasers under the Second Lien Note Purchase Agreement (in each case, to the extent not otherwise included in the calculation of Consolidated Interest Expense), (m) transaction expenses and integration expenses incurred in connection with the Acquisition of Home Infusion Solutions, LLC, (n) losses and expenses from discontinued operations, divested joint ventures and other divested Investments or incurred in connection with the disposal of discontinued operations or the divestiture of joint ventures and other Investments, (o) expenses incurred in connection with the settlement of any litigation or claim involving any Note Party (so long as, with respect to each such litigation or claim, such expenses exceed $100,000); provided, however, any such amount added back pursuant to this clause (o) shall not exceed $6,300,000 in the aggregate (including related legal fees not to exceed $500,000) over the term of this Agreement and (p) the cumulative effect of a change in accounting principles; provided that the aggregate amount that may be added to Consolidated Net Income pursuant to clauses (d), (e), (f), (h), (i), (j), (k), (l), (m), (n) and (o) above in any period of four consecutive Fiscal Quarters shall not exceed $30,000,000; provided, further, that, commencing with the fifth full Fiscal Quarter following the Closing Date, (I) the aggregate amount that may be added to Consolidated Net Income pursuant to clauses (e), (f), (i), (j) and (m) above in any period of four consecutive Fiscal Quarters shall not exceed $20,000,000 and (II) the aggregate amount that may be added to Consolidated Net Income pursuant to clauses (d), (h), (k), (l), (n) and (o) above in any period of four consecutive Fiscal Quarters shall not exceed $10,000,000.

"Consolidated Interest Expense" shall mean, for the Issuer and its Subsidiaries for any period, determined on a consolidated basis in accordance with GAAP, the sum of (i) total interest expense, (including, without limitation and without duplication, (a) the interest component of any payments in respect of Capital Lease Obligations, capitalized or expensed during such period (whether or not actually paid during such period), (b) any premium or penalty payable in connection with the payment of make-whole amounts or other prepayment premiums payable in connection with any Indebtedness of the Issuer or any of its Subsidiaries, (c) all commissions, discounts and other fees and charges owed in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP, (d) any interest accrued during such period in respect of Indebtedness of the Issuer or any Subsidiary that is required to be capitalized rather than paid in cash, (e) interest paid or payable with respect to discontinued operations and (f) the interest portion of any deferred payment obligations) plus (ii) the net amount payable (or minus the net amount receivable) with respect to Hedging Transactions during such period (whether or not actually paid or received during such period).

"Consolidated Junior Indebtedness" shall mean, as of any date, the aggregate stated principal amount of all Indebtedness of the Issuer and its Subsidiaries, measured on a consolidated basis as of such date, secured by Liens that are junior in priority to the Liens securing the Obligations (but excluding the Second Lien Obligations).

"Consolidated Net Income" shall mean, for the Issuer and its Subsidiaries for any period, the net income (or loss) of the Issuer and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, but excluding therefrom (to the extent otherwise included therein) (i) any extraordinary gains or losses, (ii) any gains or losses attributable to write-ups or write-downs of assets (including any reappraisal or revaluation of assets (including intangibles, goodwill and deferring financing costs)), or the sale of assets (other than the sale of assets in the ordinary course of business), (iii) any interest of the Issuer or any Subsidiary of the Issuer in the unremitted or undistributed earnings of any Person in which the Issuer or any Subsidiary of the Issuer has an equity interest but that is not a Subsidiary, (iv) any income (or loss) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Issuer or any Subsidiary or the date that such Person's assets are acquired by the Issuer or any Subsidiary, (v) any income (or loss) for such period attributable to the early extinguishment of Indebtedness, (vi) any interest of the Issuer or any Subsidiary of the Issuer in the unremitted or undistributed earnings of any Subsidiary of the Issuer or another Subsidiary of the Issuer to the extent that such remittance or distribution of earnings is prohibited by the organizational documents of such Subsidiary, contractual restrictions applicable to such Subsidiary, or by applicable Requirements of Law, and (vii) any unrealized income (or loss) in respect of Hedging Obligations.

"Consolidated Total Assets" shall mean, as of any date, the total assets of the Issuer and its Subsidiaries set forth on the consolidated balance sheet of the Issuer and its Subsidiaries as of the end of the most recently ended Fiscal Quarter for which financial statements have been delivered (or were required to be delivered) pursuant to Section 5.1(a) or 5.1(b), as applicable, determined on a consolidated basis in conformity with GAAP.

"Consolidated Total Debt" shall mean, as of any date, the aggregate stated principal amount of all Indebtedness of the Issuer and its Subsidiaries measured on a consolidated basis as of such date, but excluding (i) Indebtedness of the type described in clause (xi) of the definition thereof, (ii) Indebtedness of the type described in Section 7.1(a)(xii), (iii) the portion of any earn-out or other deferred or contingent purchase consideration that is based upon the achievement of future financial or operational criteria and that has not yet been earned in accordance with the terms of the applicable agreements, and (iv) Indebtedness of the type described in clause (vi) of the definition thereof (except to the extent of any unreimbursed drawings thereunder).

"Consolidated Total Net Debt" shall mean, as of any date, the sum of (i) Consolidated Total Debt minus (ii) the aggregate amount of cash and Cash Equivalents held by the Note Parties with respect to which the Collateral Agent has a first-priority perfected lien securing the Obligations included in the consolidated balance sheet of the Note Parties as of such date (other than (a) Restricted Cash and (b) for purposes of calculating the Consolidated Total Net Leverage Ratio or the Consolidated Covenant Testing Net Leverage Ratio, as applicable, the aggregate principal amount of any Indebtedness incurred on the date on which such ratio is calculated).

"Consolidated Total Net Leverage Ratio" shall mean, as of any date, the ratio of (i) Consolidated Total Net Debt as of such date to (ii) Consolidated EBITDA for the four consecutive Fiscal Quarters ending on the last day of the most recent Fiscal Quarter prior to such date for which financial statements have been delivered (or were required to be delivered) pursuant to Section 5.1(a) or 5.1(b), as applicable. The Consolidated Total Net Leverage Ratio shall be calculated on a Pro Forma Basis.

"Continuing Director" shall mean, with respect to any period, any individuals (A) who were members of the Governing Body of the Issuer on the first day of such period, (B) whose election or nomination to that Governing Body was approved by individuals referred to in clause (A) above constituting at the time of such election or nomination at least a majority of that Governing Body, or (C) whose election or nomination to that Governing Body was approved by individuals referred to in clauses (A) and (B) above constituting at the time of such election or nomination at least a majority of that Governing Body.

"Contractual Obligation" of any Person shall mean any provision of any security issued by such Person or of any agreement, instrument or undertaking under which such Person is obligated or by which it or any of the property in which it has an interest is bound.

"Controlled Account" shall have the meaning set forth in Section 5.11.

"Copyright" shall have the meaning assigned to such term in the Guaranty and Security Agreement.

"Copyright Security Agreement" shall mean any Copyright Security Agreement executed by a Note Party owning registered Copyrights or applications for Copyrights in favor of the Collateral Agent for the benefit of the Secured Parties, both on the Closing Date and thereafter.

"Debtor Relief Laws" means the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

"Default" shall mean any condition or event that, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Default Interest" shall have the meaning set forth in Section 2.10(c).

"Defaulting Purchaser" shall mean, subject to Section 2.21, any Purchaser that (a) has failed to (i) purchase its Notes within two (2) Business Days of the date such Notes were required to be purchased hereunder unless such Purchaser notifies the Issuer and each other Purchaser in writing that such failure is the result of such Purchaser's good faith determination that one or more conditions precedent to purchase (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Collateral Agent or any other Purchaser any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Issuer in writing that it does not intend to comply with its purchase obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Purchaser's obligation to purchase a Note hereunder and states that such position is based on such Purchaser's good faith determination that a condition precedent to purchase (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Issuer, to confirm in writing to the Issuer that it will comply with its prospective purchase obligations hereunder (provided that such Purchaser shall cease to be a Defaulting Purchaser pursuant to this clause (c) upon receipt of such written confirmation by the Issuer), or (d) has, or has a direct or indirect Parent Company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-in Action; provided that a Purchaser shall not be a Defaulting Purchaser solely by virtue of the ownership or acquisition of any equity interest in that Purchaser or any direct or indirect Parent Company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Purchaser with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Purchaser (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Purchaser.

"Disqualified Capital Stock" shall mean, with respect to any Person, any Capital Stock that by its terms (or by the terms of any other Capital Stock into which it is convertible or exchangeable) or otherwise (i) matures (other than as a result of a voluntary redemption or repurchase by the issuer of such Capital Stock) or is subject to mandatory redemption or repurchase (other than solely for Capital Stock that is not Disqualified Capital Stock) pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holder thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior payment in full in cash of the Obligations (other than any Obligations which expressly survive termination, Hedging Obligations owed by any Note Party to any Purchaser-Related Hedge Provider, Bank Product Obligations and indemnities and other contingent obligations not then due and payable and as to which no claim has been made) and termination of the Commitments); or (ii) is convertible into or exchangeable or exercisable for Indebtedness or any Disqualified Capital Stock at the option of the holder thereof; or (iii) may be required to be redeemed or repurchased at the option of the holder thereof (other than solely for Capital Stock that is not Disqualified Capital Stock), in whole or in part, in each case specified in (i), (ii) or (iii) above on or prior to the date that is ninety one days after the Maturity Date; or (d) provides for scheduled payments of dividends to be made in cash.

"Disqualified Institution" shall mean (a) any Disqualified Purchaser and (b) any Competitor.

"Disqualified Purchaser" shall mean each institutional investor, bank or other financial institution previously identified in writing to the Purchasers and the Collateral Agent and set forth in that certain letter agreement dated as of the date hereof delivered by the Issuer to the Purchasers and the Collateral Agent (the "Disqualified Purchaser Letter"), and each Person known to the applicable Purchaser seeking to sell all or a portion of the Note(s) held by it to be an Affiliate thereof and any Person that is readily identifiable as an affiliate thereof on the basis of its name; provided that in no event shall any bona fide (A) debt fund, (B) investment vehicle, (C) regulated bank entity or (D) non-regulated lending entity, in each case, that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business (each, a "Bona Fide Lending Affiliate") be a Disqualified Purchaser, unless such Bona Fide Lending Affiliate is identified in the Disqualified Purchaser Letter.

"Dollar(s)" and the sign "$" shall mean lawful money of the United States.

"Domestic Subsidiary" shall mean each Subsidiary of the Issuer that is organized under the laws of the United States or any state or district thereof and which is not a CFC Subsidiary.

"EEA Financial Institution" shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Effective Yield" means, as to any Indebtedness, the effective yield on such Indebtedness in the reasonable determination of the Required Purchasers in consultation with the Issuer and consistent with generally accepted financial practices, taking into account the applicable interest rate margins, any interest rate floors or similar devices and all fees, including upfront or similar fees or original issue discount (converted to yield assuming a four-year average life to maturity and without any present value discount) payable generally to lenders or other institutions providing such Indebtedness, but excluding any arrangement, structuring, ticking or other similar fees payable in connection therewith that are not generally shared with the relevant lenders or other institutions providing such Indebtedness and, if applicable, consent fees for an amendment paid generally to consenting lenders or other institutions providing such Indebtedness.

"Environmental Indemnity" shall mean each environmental indemnity made by each Note Party with respect to Real Estate required to be pledged as Collateral in favor of the Collateral Agent for the benefit of the Secured Parties, in each case in form and substance reasonably satisfactory to the Collateral Agent and the Required Purchasers.

"Environmental Laws" shall mean all applicable laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, binding notices or binding agreements issued, promulgated or entered into by or with any Governmental Authority relating in any way to the environment, preservation or reclamation of natural resources, the management, Release or threatened Release of any Hazardous Material or to health and safety matters.

"Environmental Liability" shall mean any liability, contingent or otherwise (including any liability for damages, costs of environmental investigation and remediation, costs of administrative oversight, fines, natural resource damages, penalties or indemnities), of the Issuer or any of its Subsidiaries directly or indirectly resulting from or based upon (i) any actual or alleged violation of any Environmental Law, (ii) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (iii) any actual or alleged exposure to any Hazardous Materials, (iv) the Release or threatened Release of any Hazardous Materials or (v) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended and in effect from time to time, and any successor statute and the regulations promulgated and rulings issued thereunder.

"ERISA Affiliate" shall mean any person that for purposes of Title IV of ERISA or Section 412 of the Code would be deemed at any relevant time to be a "single employer" or otherwise aggregated with the Issuer or any of its Subsidiaries under Section 414(b) or (c) (or, as relevant, Section 414(m) or (o)) of the Code or Section 4001 of ERISA.

"ERISA Event" shall mean (i) the occurrence of any "reportable event" as defined in Section 4043 of ERISA with respect to a Plan (other than an event as to which the PBGC has waived the requirement of Section 4043(a) of ERISA that it be notified of such event); (ii) any failure to make a required contribution to any Plan that would result in the imposition of a lien or other encumbrance or the provision of security under Section 430 of the Code or Section 303(k) or 4068 of ERISA, or the arising of such a lien or encumbrance; (iii) there being or arising any "unpaid minimum required contribution" or "accumulated funding deficiency" (as defined or otherwise set forth in Section 4971 of the Code or Part 3 of Subtitle B of Title 1 of ERISA), whether or not waived; (iv) any filing of any request for or receipt of a minimum funding waiver under Section 412 of the Code or Section 302 of ERISA with respect to any Plan or Multiemployer Plan; (v) any incurrence by the Issuer, any of its Subsidiaries or any of their respective ERISA Affiliates of any liability under Title IV of ERISA with respect to any Plan or Multiemployer Plan (other than for premiums due and not delinquent under Section 4007 of ERISA); (vi) any institution of proceedings, or the occurrence of an event or condition which would reasonably be expected to constitute grounds for the institution of proceedings, by the PBGC, under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (vii) any incurrence by the Issuer, any of its Subsidiaries or any of their respective ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Multiemployer Plan, or the receipt by the Issuer, any of its Subsidiaries or any of their respective ERISA Affiliates of any notice that a Multiemployer Plan is in endangered or critical status under Section 305 of ERISA; (viii) any receipt by the Issuer, any of its Subsidiaries or any of their respective ERISA Affiliates of any notice, or any receipt by any Multiemployer Plan from the Issuer, any of its Subsidiaries or any of their respective ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; (ix) the occurrence of a non-exempt prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code with respect to any Plan such that material liability would be incurred by the Issuer or any of its Subsidiaries; (x) any filing of a notice of intent to terminate any Plan if such termination would require material additional contributions in order to be considered a standard termination within the meaning of Section 4041(b) of ERISA; (xi) any filing under Section 4041(c) of ERISA of a notice of intent to terminate any Plan; or (xii) the termination of any Plan under Section 4041(c) of ERISA.

"EU Bail-In Legislation Schedule" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Eurodollar", when used in reference to any Note or Issuance, refers to whether such Note, or the Notes issued pursuant to such Issuance, bears interest at a rate determined by reference to the LIBOR Rate.

"Event of Default" shall have the meaning set forth in Section 8.1.

"Excess Cash Flow" shall mean, for the Issuer and its consolidated Subsidiaries for any Fiscal Year:

(a) Consolidated EBITDA for such Fiscal Year,

minus

(b) the sum of the following, without duplication:

(i) the aggregate amount of all regularly scheduled principal payments of Indebtedness (including the Notes and the principal component of any Capital Lease Obligations) made during such Fiscal Year (excluding payments in respect of any revolving credit facility unless there is an equivalent permanent reduction in commitments thereunder);

(ii) the aggregate amount of all mandatory prepayments or repurchases of Indebtedness for borrowed money (including the Notes and the Second Lien Notes) (other than in connection with any permitted refinancing) made during such Fiscal Year (excluding payments in respect of any revolving credit facility unless there is an equivalent permanent reduction in commitments thereunder) other than any mandatory prepayment required pursuant to Section 2.9(c) and Section 2.9(c) of the Second Lien Note Purchase Agreement;

(iii) the aggregate amount of all voluntary prepayments of Indebtedness for borrowed money (other than the Obligations and the Second Lien Obligations) made during such Fiscal Year (excluding payments in respect of any revolving credit facility unless there is an equivalent permanent reduction in commitments thereunder);

(iv) Consolidated Interest Expense paid in cash for such Fiscal Year;

(v) income taxes (including franchise taxes imposed in lieu of income taxes) paid in cash with respect to such Fiscal Year;

(vi) the aggregate amount paid in cash during such Fiscal Year on account of Capital Expenditures, Investments, and Restricted Payments, in each case, to the extent not prohibited hereunder (including the amount of all related fees, costs and expenses incurred in connection therewith) and excluding the portion of any such Capital Expenditure, Investments, or Restricted Payments that is financed with funds that do not constitute Internally Generated Cash; provided that, with respect to any Capital Expenditures and other Investments described in this clause (vi), the Issuer may include in the calculation of Excess Cash Flow for any Fiscal Year the aggregate amount of expenditures that the Issuer or any of its Subsidiaries becomes legally obligated to make during such Fiscal Year pursuant to a binding contract, committed purchase order or other binding agreement but that are not actually made in cash during such Fiscal Year so long as (x) such expenditures are actually made in cash during the following Fiscal Year, (y) the Issuer includes in the certificate required to be delivered pursuant to Section 2.9(c) a description of such expenditures and a certification that such expenditures will be made during the following Fiscal Year, and (z) if such expenditures are included in the calculation of Excess Cash Flow for any Fiscal Year, they may not be included in the calculation of Excess Cash Flow for the following Fiscal Year;

(vii) any increase in the Working Capital during such period (measured as the excess of such Working Capital at the end of such period over such Working Capital at the beginning of such period);

(viii) all other items added back to Consolidated EBITDA pursuant to (and subject to the limitations in) the definition of Consolidated EBITDA to the extent paid in cash during such Fiscal Year;

plus

(c) without duplication, any decrease in the Working Capital during such period (measured as the excess of such Working Capital at the beginning of such period over such Working Capital at the end thereof).

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended and in effect from time to time.

"Excluded Account" shall mean (a) deposit accounts specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of any Note Party's employees, (b) any other zero balance account or disbursement only account, (c) deposit accounts specifically and exclusively used for escrowing funds and holding funds in trust, (d) Government Receivables Accounts, (e) any deposit account specifically and exclusively used to hold cash collateral for letters of credit permitted pursuant to Section 7.1(a)(xix), and (f) any other deposit account, securities account or commodities account, including local or petty cash accounts, which (i) individually does not have an average daily balance for a period in excess of three (3) Business Days of more than $1,000,000 in cash or investment property on deposit therein or (ii) collectively with all such other accounts described in this clause (f), does not have an aggregate balance at any time of more than $3,000,000 in cash or investment property on deposit therein.

"Excluded Property" shall have has the meaning specified in the Guaranty and Security Agreement.

"Excluded Swap Obligation" shall mean, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act at the time the Guarantee of such Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation; provided that, for the avoidance of doubt, in determining whether any Guarantor is an "eligible contract participant" under the Commodity Exchange Act, the keepwell agreement set forth in Section 10.19 of the Guaranty and Security Agreement shall be taken into account. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal. For purposes of this definition, the term "Swap Obligations" shall mean any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Excluded Taxes" shall mean, with respect to any payment to be made by or on account of any obligation of the Issuer hereunder, (a) income or franchise Taxes that are (i) imposed on (or measured by) the Recipient's (or Beneficial Owner's) net income by the United States, or by the jurisdiction under the laws of which such Recipient (or Beneficial Owner) is organized or in which its principal office is located or, in the case of any Purchaser, in which its Applicable Funding Office is located or (ii) Other Connection Taxes, (b) any branch profits Taxes imposed by the United States or any similar Taxes that are imposed by any other jurisdiction in which such Recipient (or Beneficial Owner) is located, (c) in the case of a Purchaser, any U.S. federal withholding Taxes that are imposed on amounts payable to any Recipient (or Beneficial Owner) at the time such Recipient (or Beneficial Owner) becomes a Recipient (or Beneficial Owner) under this Agreement or designates a new funding office, except in each case to the extent that amounts with respect to such Taxes were payable either (i) to such Recipient's (or Beneficial Owner's) assignor immediately before such Recipient (or Beneficial Owner) became a Recipient (or Beneficial Owner) under this Agreement, or (ii) to such Recipient (or Beneficial Owner) immediately before it designated a new funding office, (d) any Taxes that are attributable to a Recipient's (or Beneficial Owner's) failure to comply with Section 2.17(f), or (e) any Taxes imposed under FATCA.

"Existing Credit Agreement" shall mean that certain Credit Agreement dated as of July 31, 2013, by and among the Issuer, the lenders from time to time party thereto and SunTrust Bank, as administrative agent, issuing bank and swingline lender, as amended, restated, supplemented, or otherwise modified from time to time prior to the Closing Date.

"Existing Priming Credit Agreement" shall mean that certain Priming Credit Agreement dated as of January 6, 2017, by and among the Issuer, the lenders from time to time party thereto and SunTrust Bank, as administrative agent, as amended, restated, supplemented, or otherwise modified from time to time prior to the Closing Date.

"Exjade Settlement" shall mean the Issuer's payment of an amount equal to $15,000,000, together with applicable interest thereon (plus any amounts arising out of the Issuer's obligation to reimburse certain parties for their out of pocket expenses) to settle certain allegations relating to the prescription drug known as Exjade as described in the Issuer's Form 8-K filed with the SEC on or about December 16, 2013.

"FATCA" shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations with respect thereto or official administrative interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any intergovernmental agreements (or related legislation or official administrative rules or practices) implementing the foregoing.

"FDA" shall mean the United Stated Food & Drug Administration.

"Federal Funds Rate" shall mean, for any day, the rate *per annum* (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with member banks of the Federal Reserve System arranged by Federal funds brokers, as published by the Federal Reserve Bank of New York on the next succeeding Business Day or, if such rate is not so published for any Business Day, the Federal Funds Rate for such day shall be the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day on such transactions received by the Required Purchasers from three Federal funds brokers of recognized standing selected by the Required Purchasers.

"Federal/State Healthcare Program Account Debtor" shall mean any account debtor which is (a) the United States of America acting under the Medicaid or Medicare program established pursuant to the Social Security Act, the Tricare/CHAMPUS Program or any other Federally sponsored health care program other than the health care programs for which Federal government employees are beneficiaries, (b) any state or the District of Columbia acting pursuant to a health plan adopted pursuant to a State Medicaid program or (c) any agent, carrier, administrator or intermediary for any of the foregoing.

"Fee Letters" shall mean, collectively, (a) that certain closing payment letter dated as of June 7, 2017 (the "Ares Closing Payment Letter"), executed by Ares Management LLC, on behalf of one or more of its affiliated funds or accounts, and accepted by the Issuer and (b) that certain fee letter dated June 19, 2017 between the Collateral Agent and the Issuer.

"First Lien/Second Lien Intercreditor Agreement" shall mean that certain Intercreditor Agreement, dated as of the Closing Date, between the Collateral Agent and the Second Lien Collateral Agent, and acknowledged by the Note Parties, as the same may be amended, supplemented, waived or otherwise modified from time to time in accordance with the terms hereof and thereof.

"Fiscal Quarter" shall mean any fiscal quarter of the Issuer.

"Fiscal Year" shall mean any fiscal year of the Issuer.

"Flood Insurance Laws" shall mean, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect of any successor statute thereto, in each case, together with all statutory and regulatory provisions consolidating, amending, replacing, supplementing, implementing or interpreting any of the foregoing, as amended or modified from time to time.

"Food and Drug Laws" shall mean any applicable laws, rules, regulations, ordinances and administrative manuals, orders, guidelines, guidances and requirements issued by any Governmental Authority relating to the compounding, development, design, premarket clearance, approval, collection, manufacture, processing, holding, storing, testing, labeling, packaging, repackaging, packing, transporting, shipping, importing, exporting, marketing, advertising, promotion, sale, installation, servicing, and distribution of food, drugs, biological products, cosmetics and/or medical devices including components and accessories including, without limitation, the Federal Food Drug, and Cosmetic Act, 21 U.S.C. § 321 et seq., and all analogous federal, state, local, municipal, foreign, multinational, foreign regional, and foreign national laws, rules, orders, binding agreements, regulations, statutes, directives, standards, ordinances, codes or requirements of any Governmental Authority.

"Foreign Person" shall mean any Person that is not a U.S. Person.

"Foreign Subsidiary" shall mean each Subsidiary of the Issuer other than a Domestic Subsidiary.

"GAAP" shall mean generally accepted accounting principles in the United States applied on a consistent basis and subject to the terms of Section 1.3.

"Governing Body" shall mean the board of directors, board of managers, board of representatives, board of advisors or similar governing or advisory body of any Person.

"Governmental Authority" shall mean the government of the United States, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including, without limitation, CMS and FDA.

"Governmental Payors" shall mean Medicare, Medicaid, CHAMPUS, CHAMPVA, TRICARE, Veteran's Administration or any other Governmental Authority or quasi-public agency providing funding for healthcare services.

"Governmental Payor Arrangements" shall mean arrangements, plans or programs with Governmental Payors for payment or reimbursement in connection with health care services, products or supplies.

"Government Receivables Account" shall have the meaning set forth in Section 5.11(e).

"Government Receivables Account Agreement" shall have the meaning set forth in Section 5.11(e).

"Guarantee" of or by any Person (the "guarantor") shall mean any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly and including any obligation, direct or indirect, of the guarantor (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (iv) as an account party in respect of any letter of credit or letter of guaranty issued in support of such Indebtedness or obligation; provided that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable principal amount of the primary obligation in respect of which such Guarantee is made or, if not so 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. The term "Guarantee" used as a verb has a corresponding meaning.

"Guarantor" shall mean each of the Subsidiary Note Parties.

"Guaranty and Security Agreement" shall mean the First Lien Guaranty and Security Agreement, dated as of the date hereof, made by the Note Parties in favor of the Collateral Agent for the benefit of the Secured Parties.

"Hazardous Materials" shall mean all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Health Care Audits" shall have the meaning set forth in Section 4.20(g).

"Healthcare Laws" shall mean, collectively, any and all federal state or local laws, rules, regulations, ordinances and administrative manuals, orders, guidelines, guidances and requirements issued by any Governmental Authority under or in connection with Medicare, Medicaid or any Government Payor program or any law governing the licensure of or regulating healthcare providers, professionals, facilities or payors or otherwise governing or regulating the provision of, or payment for, medical services, including without limitation, (i) all federal and state fraud and abuse laws, including but not limited to the federal Anti-Kickback Statute (42 U.S.C. (§1320a-7b(b)), the Stark Law, the civil False Claims Act (31 U.S.C. §3729 et seq.), Section 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations promulgated pursuant to such statues; (ii) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and the regulations promulgated thereunder, (iii) HIPAA and the HITECH Act, (iv) Medicare; (v) Medicaid; (vi) the Controlled Substances Act (21 U.S.C. § 801, et seq.) and all applicable requirements, regulations and guidances issued thereunder by the Drug Enforcement Administration ("DEA"); (vii) Food and Drug Laws, (viii) state pharmacy laws; (ix) the Clinical Laboratory Improvement Act (42 U.S.C. § 263a, et seq.), (x) the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (P.L. 108-173, 117 Stat. 2066), (xi) all applicable professional standards regulating healthcare providers, healthcare professionals, healthcare facilities or healthcare payors, each of (i) through (x) as may be amended from time to time.

"Healthcare Material Adverse Effect" shall mean (a) any Material Adverse Effect or (b) any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singularly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences whether or not related, that (i) has resulted, or is reasonably likely to result, in the suspension or termination of the ability to operate of one or more BioScrip Facilities, unless (x) the patients serviced by all such BioScrip Facilities that are subject to such suspension or termination can be moved to, or serviced by, other BioScrip Facilities that are not subject to suspension or termination at a cost to the Issuer and its Subsidiaries of not more than $2,500,000 in the aggregate and (y) there is no reasonably anticipated payor contract disruption that is reasonably likely to result in the loss of more than $2,500,000 in gross revenues as a result of such movement of patients to, or such servicing of patients by, other BioScrip Facilities, (ii) has resulted, or is reasonably likely to result, in the inability of the Issuer and its Subsidiaries to deliver services to more than 5.0% of the patients of the Issuer and its Subsidiaries, (iii) has resulted, or is reasonably likely to result, in remediation costs to the Issuer and its Subsidiaries in excess of $2,500,000 or (iv) results in or is reasonably likely to result in the loss of more than $2,500,000 in gross revenues by the Issuer and its Subsidiaries.

"Hedging Obligations" of any Person shall mean any and all monetary obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired under (i) any and all Hedging Transactions, (ii) any and all cancellations, buy backs, reversals, terminations or assignments of any Hedging Transactions and (iii) any and all renewals, extensions and modifications of any Hedging Transactions and any and all substitutions for any Hedging Transactions.

"Hedge Termination Value" shall mean, in respect of any one or more Hedging Transactions, after taking into account the effect of any netting agreement relating to such Hedging Transactions, (a) for any date on or after the date such Hedging Transactions have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedging Transactions, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedging Transactions (which may include a Purchaser or any Affiliate of a Purchaser).

"Hedging Transaction" of any Person shall mean (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into by such Person that is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, spot transaction, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104 191, Aug. 21, 1996, 110 Stat. 1936, and regulations promulgated pursuant thereto regarding privacy, security and transmission of health information (including the Standards for Privacy of Individually Identifiable Health Information, the Security Standards for the Protection of Electronic Protected Health Information and the Standards for Electronic Transactions and Code Sets promulgated thereunder), all as amended from time to time, and any successor statute and regulations.

"HIPAA/HITECH Compliance Plan" shall have the meaning set forth in Section 4.21.

"HIPAA/HITECH Compliant" shall have the meaning set forth in Section 4.21.

"HITECH Act" shall mean the Health Information Technology for Economic and Clinical Health Act provisions of the American Reinvestment and Recovery Act of 2009, and regulations promulgated pursuant thereto, all as amended from time to time, and any successor statute and regulations.

"Indebtedness" of any Person shall mean, without duplication, (i) all obligations of such Person for borrowed money (including, without limitation, the Second Lien Obligations), (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person in respect of the deferred purchase price of property or services (other than current liabilities, accrued expense obligations and trade payables incurred in the ordinary course of business; provided that any such obligation that is secured by a Lien (including the ABDC Obligations) shall constitute Indebtedness), (iv) all obligations of such Person under any conditional sale or other title retention agreement(s) relating to property acquired by such Person, (v) all Capital Lease Obligations of such Person, (vi) all obligations, contingent or otherwise, of such Person in respect of letters of credit, acceptances or similar extensions of credit, (vii) all Guarantees of such Person of the type of Indebtedness described in clauses (i) through (vi) above, (viii) all Indebtedness of a third party secured by any Lien on property owned by such Person, whether or not such Indebtedness has been assumed by such Person (but limited to the lesser of the fair market value of such property and the outstanding principal amount of such Indebtedness), (ix) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any Disqualified Capital Stock of such Person, (x) all Off-Balance Sheet Liabilities and (xi) obligations of such Person under any Hedging Obligations (valued at the lesser of the Hedging Termination Value and the Net Mark-to-Market Exposure thereof). The Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer, except to the extent that the terms of such Indebtedness provide that such Person is not liable therefor. The Indebtedness of any Person shall exclude purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller.

"Indemnified Taxes" shall mean (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Note Party under any Note Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

"Information and Collateral Disclosure Certificate" shall have the meaning assigned to such term in the Guaranty and Security Agreement.

"Intellectual Property Rights" shall have the meaning assigned to such term in the Guaranty and Security Agreement.

"Interest Period" shall mean with respect to any Eurodollar Note, a period of one month; provided that:

(i) the initial Interest Period for such Note shall commence on the date of Issuance of such Note (including the date of any conversion from a Note of another Type), and each Interest Period occurring thereafter in respect of such Note shall commence on the day on which the next preceding Interest Period expires;

(ii) if any Interest Period would otherwise end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day, unless such Business Day falls in another calendar month, in which case such Interest Period would end on the next preceding Business Day;

(iii) any Interest Period which begins on the last Business Day of a calendar month or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period shall end on the last Business Day of such calendar month;

(iv) each principal installment of the Notes shall have an Interest Period ending on each installment payment date and the remaining principal balance (if any) of the Notes shall have an Interest Period determined as set forth above; and

(v) no Interest Period may extend beyond the Maturity Date.

"Internally Generated Cash" shall mean internally generated cash of the Issuer and its Subsidiaries (and shall exclude, for the avoidance of doubt, the proceeds of any disposition of assets, sale of equity, capital contribution or incurrence of Indebtedness).

"Investments" shall have the meaning set forth in Section 7.4.

"IRS" shall mean the Internal Revenue Service of the United States.

"Issuance" shall mean an issuance hereunder consisting of Notes to be issued by or for the benefit of the Issuer to any Purchasers pursuant to Article II.

"Issuer" shall have the meaning set forth in the introductory paragraph hereof.

"LIBOR Rate" shall mean for each Interest Period, a rate of interest determined by the Required Purchasers (which determination shall be conclusive in the absence of manifest error) equal to the greater of:

(i) one percent (1.00%) per annum, and

(ii) (a) the rate per annum appearing on Bloomberg L.P.'s service (the "Service") (or on any successor to or substitute for the Service) for ICE LIBOR USD interest rates as of 11:00 a.m. (London, England time) two Business Days prior to the commencement of the requested Interest Period, for a term and in an amount comparable to the Interest Period and the amount of the Eurodollar Note requested (whether as an initial Eurodollar Note or as a continuation of a Eurodollar Note or as a conversion of a Base Rate Note to a Eurodollar Note) by the Issuer in accordance with this Agreement. If the Service shall no longer report ICE LIBOR USD interest rates, or such interest rates cease to exist, the Required Purchasers shall be permitted to select an alternate service that quotes, or alternate interest rates that reasonably approximate, the rates of interest per annum at which deposits of Dollars in immediately available funds are offered by major financial institutions reasonably satisfactory to the Required Purchasers in the London interbank market as of 11:00 a.m. (London, England time) two (2) Business Days prior to the commencement of the requested Interest Period; divided by

(b) a number equal to 1.0 minus the aggregate (but without duplication) of the rates (expressed as a decimal fraction) of reserve requirements in effect on the day which is two (2) Business Days prior to the beginning of such Interest Period (including basic, supplemental, marginal and emergency reserves under any regulations of the Board of Governors of the Federal Reserve system or other governmental authority having jurisdiction with respect thereto, as now and from time to time in effect) for Eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D of such Board) which are required to be maintained by a member bank of the Federal Reserve System;

such rate to be adjusted to the nearest one sixteenth of one percent (1/16th of 1%) or, if there is not a nearest one sixteenth of one percent (1/16th of 1%), to the next highest one sixteenth of one percent (1/16th of 1%).

"Licenses" shall mean any and all licenses (including professional licenses), approvals, certificates of need, accreditations, certifications, permits, franchises, rights to conduct business (by a Governmental Authority or otherwise), Orders and any other governmental authorizations.

"Lien" shall mean any mortgage, pledge, security interest, lien (statutory or otherwise), charge, encumbrance, hypothecation, assignment, deposit arrangement, or other arrangement having the practical effect of any of the foregoing (including any conditional sale or other title retention agreement and any capital lease having the same economic effect as any of the foregoing).

"Limitation" shall mean a revocation, suspension, termination, impairment, probation, limitation, non-renewal, forfeiture, restriction, declaration of ineligibility, loss of status as a participating provider, or the loss of any other rights under any Governmental Payor Arrangement, Third Party Payor Arrangement, Company Accreditation or License.

"Material Adverse Effect" shall mean any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singularly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences whether or not related, that results in a material adverse change in, or a material adverse effect on, (i) the business, condition (financial or otherwise), operations, liabilities (contingent or otherwise), or properties of the Issuer and its Subsidiaries on a consolidated basis and taken as a whole, (ii) the ability of the Note Parties to perform any of their respective obligations under the Note Documents, or (iii) the rights and remedies of the Collateral Agent or the Purchasers under any of the Note Documents (other than solely as a result of any action or inaction on the part of the Collateral Agent or any Purchaser).

"Material Agreements" shall mean all agreements, documents, contracts, indentures and instruments with respect to which a default, breach or termination thereof would reasonably be expected to result in a Material Adverse Effect.

"Material Indebtedness" shall mean (i) any Indebtedness (other than the Notes) of the Issuer or any of its Subsidiaries individually or in an aggregate committed or outstanding principal amount exceeding $12,500,000, (ii) the Second Lien Obligations and (iii) the Senior Notes or any Permitted Refinancing Indebtedness.

"Material Permitted Seller Financing" shall mean any Permitted Seller Financing individually or in an aggregate committed or outstanding principal amount exceeding $10,000,000.

"Maturity Date" shall mean, with respect to the Notes, the earlier of: (i) August 15, 2020 or, if all of the Senior Notes shall have been refinanced in full with the proceeds of Permitted Refinancing Indebtedness prior to August 15, 2020, June 30, 2022; and (ii) the date on which the principal amount of all outstanding Notes has been declared or automatically has become due and payable (whether by acceleration or otherwise).

"Medicaid" shall mean, collectively, the healthcare assistance program established by Title XIX of the Social Security Act (42 U.S.C., Chapter 7, subchapter XIX, §§1396 et seq.) and all laws, rules, regulations, manuals, orders, guidelines or requirements (whether or not having the force of law) pertaining to such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

"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., Chapter 7, subchapter XVIII, §§1395 et seq.) and all laws, rules, regulations, manuals, orders or guidelines (whether or not having the force of law) pertaining to such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

"Moody's" shall mean Moody's Investors Service, Inc.

"Mortgaged Property" shall mean, individually or collectively, any Real Estate that is subject to a Mortgage.

"Mortgage" shall mean each mortgage, deed of trust, deed to secure debt or other real estate security documents delivered by any Note Party to the Collateral Agent from time to time, all in form and substance reasonably satisfactory to the Collateral Agent and the Required Purchasers.

"Multiemployer Plan" shall mean any "multiemployer plan" as defined in Section 4001(a)(3) of ERISA, which is contributed to by (or to which there is or may be an obligation to contribute of) the Issuer, any of its Subsidiaries, or an ERISA Affiliate, and each such plan for the look-back period during which the Issuer, any of its Subsidiaries, or an ERISA Affiliate continues to be subject to liability, including contingent liability, for the plan under Title IV of ERISA.

"Net Cash Proceeds" shall mean cash proceeds (including proceeds of any insurance policy) received by any Note Party, net of (i) customary, reasonable and documented (in summary form) fees and commissions paid or payable in connection therewith, including reasonable and documented (in summary form) attorneys' fees, accountants' fees, broker's fees and investment banking fees, (ii) other reasonable, documented (in summary form) and customary fees and expenses paid or payable in connection therewith to the extend paid or payable to a Person that is not an Affiliate of the Issuer, (iii) Taxes (including transfer and similar taxes) paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), to the extent properly attributable to such Prepayment Event, (iv) with respect to Net Cash Proceeds received as a result of a Prepayment Event under Section 2.9(a), (a) amounts required to be applied to the repayment of Indebtedness secured by a Lien not prohibited hereunder on any asset which is the subject of such Prepayment Event and prepayment penalties required to be paid under the terms governing such Indebtedness, (b) reserves required to be established in accordance with GAAP or any applicable documentation governing any such Prepayment Event, including escrow amounts, indemnification obligations, purchase price adjustments and other similar retained liabilities, and (c) amounts required to be paid to any party having superior rights to such proceeds pursuant to clause (ii) of the definition of Requirements of Law and (v) with respect to Net Cash Proceeds received as a result of a Prepayment Event under Section 2.9(b), underwriting discounts and other customary debt incurrence costs.

"Net Mark-to-Market Exposure" of any Person shall mean, as of any date of determination with respect to any Hedging Obligation, the excess (if any) of all unrealized losses over all unrealized profits of such Person arising from such Hedging Obligation. "Unrealized losses" shall mean the fair market value of the cost to such Person of replacing the Hedging Transaction giving rise to such Hedging Obligation as of the date of determination (assuming such Hedging Transaction were to be terminated as of that date), and "unrealized profits" shall mean the fair market value of the gain to such Person of replacing such Hedging Transaction as of the date of determination (assuming such Hedging Transaction were to be terminated as of that date).

"Non-Defaulting Purchaser" shall mean, at any time, a Purchaser that is not a Defaulting Purchaser.

"Non-U.S. Plan" shall mean any plan, fund (including, without limitation, any superannuation fund) or other similar program established, contributed to (regardless of whether through direct contributions or through employee withholding) or maintained outside the United States by the Issuer or one or more of its Subsidiaries primarily for the benefit of employees of the Issuer or such Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement, or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

"Note" and "Notes" shall have the meaning set forth in Section 2.2.

"Note Documents" shall mean, collectively, this Agreement, the Collateral Documents, the First Lien/Second Lien Intercreditor Agreement, the ABDC Intercreditor Agreement, any other intercreditor agreement or subordination agreement entered into with the Collateral Agent or any Purchaser in connection with the Obligations, the Fee Letters, all Notices of Conversion/Continuation, all Compliance Certificates, the Notes, and any and all other instruments, agreements, documents and writings executed by or in favor of the Collateral Agent or any Purchaser in connection with any of the foregoing. Not in limitation of the foregoing, for purposes of the First Lien/Second Lien Intercreditor Agreement, the ABDC Intercreditor Agreement and any other intercreditor agreement or subordination agreement entered into with the Collateral Agent or any Purchaser in connection with the Obligations, the term "Note Documents" shall include all instruments, agreements, documents and writing executed by or in favor of the Collateral Agent or any Purchaser in connection with (a) Bank Product Obligations and (b) Hedging Obligations owed by any Note Party to any Purchaser-Related Hedge Provider.

"Note Parties" shall mean the Issuer and the Subsidiary Note Parties.

"Notice of Conversion/Continuation" shall have the meaning set forth in Section 2.4(b).

"Obligations" shall mean (a) all amounts owing by the Note Parties to the Collateral Agent or any Purchaser pursuant to or in connection with this Agreement or any other Note Document or otherwise with respect to any Note including, without limitation, all principal, interest (including any interest accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or like proceeding relating to the Issuer, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), reimbursement obligations, fees, expenses, indemnification and reimbursement payments, costs and expenses (including all fees and expenses of counsel to the Collateral Agent and any Purchaser payable by the Note Parties pursuant to this Agreement or any other Note Document), whether direct or indirect, absolute or contingent, liquidated or unliquidated, now existing or hereafter arising hereunder or thereunder, (b) all Hedging Obligations owed by any Note Party to any Purchaser-Related Hedge Provider, and (c) all Bank Product Obligations, together with all renewals, extensions, modifications or refinancings of any of the foregoing; provided, however, that with respect to any Guarantor, the Obligations shall not include any of such Guarantor's Excluded Swap Obligations.

"OFAC" shall mean the U.S. Department of the Treasury's Office of Foreign Assets Control.

"Off-Balance Sheet Liabilities" of any Person shall mean (i) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (ii) any liability of such Person under any sale and leaseback transactions that do not create a liability on the balance sheet of such Person, (iii) any Synthetic Lease Obligation or (iv) any 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 sheet of such Person.

"Order" means any order, award, decision, injunction, judgment, ruling, decree, charge, writ, subpoena or verdict entered, issued, made or rendered by any Governmental Authority or arbitrator.

"OSHA" shall mean the Occupational Safety and Health Act of 1970, as amended from time to time, and any successor statute.

"Other Connection Taxes" shall mean, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Note Document, or sold or assigned an interest in any Note or Note Document).

"Other Taxes" shall mean any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made hereunder or under any other Note Document or from the execution, delivery, performance or enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement or any other Note Document, except any such Taxes imposed with respect to an assignment (other than an assignment described in Section 2.20), participation or other transfer.

"Parent Company" shall mean, with respect to a Purchaser, the "bank holding company" as defined in Regulation Y, if any, of such Purchaser, and/or any Person owning, beneficially or of record, directly or indirectly, a majority of the shares of such Purchaser.

"Participant" shall have the meaning set forth in Section 10.4(d).

"Participant Register" shall have the meaning set forth in Section 10.4(d).

"Patent" shall have the meaning assigned to such term in the Guaranty and Security Agreement.

"Patent Security Agreement" shall mean any Patent Security Agreement executed by a Note Party owning Patents in favor of the Collateral Agent for the benefit of the Secured Parties, both on the Closing Date and thereafter.

"Patriot Act" shall mean the USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109-177 (signed into law March 9, 2006)), as amended and in effect from time to time.

"PBGC" shall mean the U.S. Pension Benefit Guaranty Corporation, as referred to and defined in ERISA and any successor entity performing similar functions.

"Permitted Acquisition" shall mean any Acquisition of a Target, in each instance, to the extent that each of the following conditions shall have been satisfied:

(i) no Default or Event of Default shall then exist or would exist after giving effect thereto;

(ii) such Acquisition shall not be hostile and shall have been approved by the Governing Body and, to the extent applicable, stockholders or other equityholders of the Target;

(iii) (x) if Consolidated EBITDA for the period of four Fiscal Quarters ended on the last day of the most recent Fiscal Quarter prior to the date of such Acquisition for which financial statements have been (or were required to be) delivered hereunder is less than $50,000,000, (A) not less than 75% of the consideration for such Acquisition shall be paid for with Internally Generated Cash, the proceeds of capital contributions and/or the proceeds of equity issuances and (B) not more than 25% of the consideration for such Acquisition may be paid for with a combination of Permitted Seller Financing, earn-outs or other deferred or contingent purchase consideration (provided that, for the avoidance of doubt, for purposes of this clause (iii)(x), the maximum amount of all earn-outs and other deferred or contingent purchase consideration shall be deemed fully earned and payable on the date of the consummation of such Acquisition and shall be included in the determination of the consideration for such Acquisition) and/or the proceeds of Second Lien Delayed Draw Notes, and (y) if Consolidated EBITDA for the period of four Fiscal Quarters ended on the last day of the most recent Fiscal Quarter prior to the date of such Acquisition for which financial statements have been (or were required to be) delivered hereunder is greater than or equal to $50,000,000, (A) not less than 50% of the consideration for such Acquisition shall be paid for with Internally Generated Cash, the proceeds of capital contributions and/or the proceeds of equity issuances and (B) not more than 50% of the consideration for such Acquisition may be paid for with a combination of Permitted Seller Financing, earn-outs or other deferred or contingent purchase consideration (provided that, for the avoidance of doubt, for purposes of this clause (iii)(y), the maximum amount of all earn-outs and other deferred or contingent purchase consideration shall be deemed fully earned and payable on the date of the consummation of such Acquisition and shall be included in the determination of the consideration for such Acquisition) and/or the proceeds of Second Lien Delayed Draw Notes;

(iv) the Issuer shall be in pro forma compliance with the covenant set forth in Article VI after giving effect to such Acquisition, calculated as of the last day of the most recent Fiscal Quarter for which financial statements have been (or were required to be) delivered hereunder and for the period of four Fiscal Quarters ending on such date, as evidenced by a certificate of a Responsible Officer of the Issuer delivered to the Collateral Agent and the Purchasers not less than two (2) days prior to the consummation of such Acquisition;

(v) the Person acquiring such Target (if such acquisition is of the type described in clause (b) of the definition of Acquisition) or the Target (if such acquisition is of the type described in clause (a) of the definition of Acquisition), as applicable, shall be organized in any state of the United States or in Washington, D.C.;

(vi) the Person acquiring such Target (if such Acquisition is of the type described in clause (b) of the definition of Acquisition) or the Target (if such Acquisition is of the type described in clause (a) of the definition of Acquisition), as applicable, and each of its Subsidiaries shall be become a Subsidiary Note Party in accordance with the provisions of Section 5.12;

(vii) the Target shall be engaged solely in the business of home infusion services (i.e., the preparation, delivery, administration and clinical monitoring of pharmaceutical treatments that are administered to a patient via intravenous, subcutaneous, intramuscular, intraspinal and enteral methods) or a line of business reasonably related, ancillary or incidental thereto;

(viii) the consideration for such Acquisition shall be paid for solely with Internally Generated Cash, the proceeds of capital contributions, the proceeds of equity issuances, the proceeds of the Second Lien Delayed Draw Notes, Permitted Seller Financing or earn-outs or other deferred or contingent purchase consideration;

(ix) after giving effect to such Acquisition, the amount available to be funded pursuant to the Second Lien Delayed Draw Notes plus cash and Cash Equivalents (other than Restricted Cash) of the Issuer and its Subsidiaries is not less than $20,000,000;

(x) such Acquisition shall not result in the formation of any Specified Strategic Joint Venture; and

(xi) the Issuer shall have (A) notified the Collateral Agent and the Purchasers of such proposed Acquisition at least fifteen (15) days (or such shorter period as the Required Purchasers may reasonably agree) prior to the consummation thereof, (B) furnished to the Collateral Agent and the Purchasers at least ten (10) days (or such shorter period as the Required Purchasers may reasonably agree) prior to the consummation thereof (1) an executed term sheet and/or letter of intent (setting forth in reasonable detail the terms and conditions of such Acquisition) and, at the request of the Required Purchasers, such other information and documents that the Required Purchasers may reasonably request, including, without limitation, all regulatory and third-party approvals required under the terms of the Acquisition documents, (2) a description of the proposed Acquisition and a due diligence report (to the extent available) and (3) for any Acquisition with total consideration in excess of $50,000,000 (for the avoidance of doubt, for purposes of this clause (3), such total consideration shall include any Permitted Seller Financing and the maximum amount of all earn-outs and other deferred or contingent purchase consideration, which shall be deemed fully earned and payable on the date of the consummation of such Acquisition) (or to the extent otherwise reasonably available to the Issuer in connection with such Acquisition), a quality of earnings report of such Target by a nationally recognized independent accounting firm or such other accounting firm reasonably satisfactory to the Required Purchasers, (C) furnished to the Collateral Agent and the Purchasers at least five (5) days (or such shorter period as the Required Purchasers may reasonably agree) prior to the consummation thereof (1) drafts of the respective material agreements, documents or instruments pursuant to which such Acquisition is to be consummated (including, without limitation, any related management, non-compete, employment, option or other material agreements), any schedules to such agreements, documents or instruments, all other material ancillary agreements, instruments and documents to be executed or delivered in connection therewith, and copies of environmental assessments and (2) pro forma financial statements of the Issuer and its Subsidiaries after giving effect to the consummation of such Acquisition and (D) furnished to the Collateral Agent and the Purchasers no later than the date of consummation of such Acquisition executed counterparts of the respective material agreements, documents or instruments pursuant to which such Acquisition is to be consummated (including, without limitation, any related management, non-compete, employment, option or other material agreements), any schedules to such agreements, documents or instruments, all other material ancillary agreements, instruments and documents to be executed or delivered in connection therewith, and copies of environmental assessments.

"Permitted Business" shall mean owning, operating, managing and maintaining infusion services, home health care, hospice services, respiratory care services, pharmacy benefit management services, durable medical equipment services, or other healthcare services, in each case, together with any other businesses as are reasonably related, ancillary or incidental thereto.

"Permitted Encumbrances" shall mean:

(i) Liens imposed by law for taxes, fees, assessments or other governmental charges which are not yet due or which are being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves are being maintained in accordance with GAAP;

(ii) statutory Liens of landlords, carriers, warehousemen, mechanics, materialmen and other Liens imposed by law in the ordinary course of business for amounts not yet delinquent for more than sixty (60) days or which are being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves are being maintained in accordance with GAAP;

(iii) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(iv) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature or to secure liability to insurance carriers, in each case in the ordinary course of business;

(v) judgment and attachment liens not giving rise to an Event of Default or Liens created by or existing from any litigation or legal proceeding that are currently being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves are being maintained in accordance with GAAP;

(vi) customary rights of set-off, revocation, refund or chargeback under deposit agreements or under the Uniform Commercial Code or common law of banks or other financial institutions where the Issuer or any of its Subsidiaries maintains deposits (other than deposits intended as cash collateral) in the ordinary course of business;

(vii) easements, zoning restrictions, rights-of-way, minor defects in title, and similar encumbrances on Real Estate imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of the Issuer and its Subsidiaries taken as a whole;

(viii) Liens in favor of collecting banks arising by operation of law under Section 4-210 of the UCC or, with respect to collecting banks located in the State of New York, under Section 4-208 of the UCC, or securing reimbursement obligations in respect of documentary letters of credit or bankers' acceptances in the ordinary course of business;

(ix) Liens arising out of consignment or similar arrangements for the sale of goods entered into by the Issuer or any of its Subsidiaries in the ordinary course of business;

(x) Liens in favor of customs and revenue authorities arising as a matter of law which secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(xi) Liens on insurance policies and the proceeds thereof in favor of the provider of such policies securing the financing of the premiums with respect thereto;

(xii) leases, subleases, non-exclusive licenses or non-exclusive sublicences on the property covered thereby, in each case, in the ordinary course of business which do not (i) materially interfere with the business of the Issuer and its Subsidiaries, taken as a whole, or (ii) secure any Indebtedness;

(xiii) any interest of title of a lessor under any lease entered into by the Issuer or any of its Subsidiaries in the ordinary course of business as a tenant and covering only the assets so leased; and

(xiv) Liens evidenced by precautionary UCC financing statements relating to operating leases, bailments and consignments of personal property;

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness for borrowed money.

"Permitted Refinancing Indebtedness" shall mean any Indebtedness issued in exchange for, or the Net Cash Proceeds of which are used to extend, refinance, renew, replace, defease or refund, the Senior Notes (or previous refinancings thereof constituting Permitted Refinancing Indebtedness ("Refinanced Senior Notes Indebtedness")); provided that (a) the principal amount of such Permitted Refinancing Indebtedness does not exceed the principal amount of the Senior Notes (or Refinanced Senior Notes Indebtedness) being refinanced plus unpaid accrued interest, fees and premiums thereon plus fees and expenses incurred in connection with such refinancing, (b)(i) the cash portion of the non-default interest rate with respect to such Permitted Refinancing Indebtedness does not exceed 10.0% per annum and (ii) the aggregate non-default Effective Yield with respect to such Permitted Refinancing Indebtedness does not exceed 15.0% per annum (which, for purposes of this clause (b)(ii), shall be calculated exclusive of any original issue discount or other upfront payments in an amount not in excess of 2.0% of the aggregate principal amount of such Permitted Refinancing Indebtedness (the "Permitted Refinancing Indebtedness OID Cap") payable in connection therewith and inclusive of any original issue discount or other upfront payments in excess of the Permitted Refinancing Indebtedness OID Cap payable in connection therewith, but otherwise in accordance with the definition of "Effective Yield"), (c) the final maturity date of such Permitted Refinancing Indebtedness is on or after six months after June 30, 2022, (d) such Permitted Refinancing Indebtedness is unsecured and is junior or pari passu in payment priority with the Obligations and the Second Lien Obligations, (e) no Permitted Refinancing Indebtedness shall have obligors that are not obligated with respect to the Senior Notes, the Obligations or the Second Lien Obligations, (f) the documentation governing such Permitted Refinancing Indebtedness shall not include any amortization or mandatory redemption, repurchase or repayment provisions (other than customary provisions relating to change of control and asset sale redemption offers) and (g) the Weighted Average Life to Maturity of such Permitted Refinancing Indebtedness is greater than or equal to the greater of (x) the Weighted Average Life to Maturity of the Senior Notes (or any Refinanced Senior Notes Indebtedness) and (y) the Weighted Average Life to Maturity of the Notes.

"Permitted Seller Financing" shall mean, with respect to any Permitted Acquisition, subordinated unsecured Indebtedness provided by the seller of the applicable Target; provided that:

(i) the obligations in respect of such Indebtedness are subordinated in right of payment to the Obligations and the Second Lien Obligations on terms acceptable to the Required Purchasers and the Required Purchasers (as defined in the Second Lien Note Purchase Agreement);

(ii) the obligations in respect of such Indebtedness shall be unsecured;

(iii) there shall be no obligors (including guarantors) in respect of such Indebtedness other than (x) in the case of an Acquisition of the type described in clause (b) of the definition of Acquisition, the Person acquiring the assets of the applicable Target, (y) in the case of an Acquisition of the type described in clause (a) of the definition of Acquisition, the applicable Target (and for the avoidance of doubt, no subsidiaries of the applicable Target shall be obligors) and (z) in each case, any parent company of the Person acquiring such asset or Target, which parent company (A) is a newly-formed holding company that holds no material assets, and has no material liabilities, other than equity interests in the Person acquiring such assets or Target and (B) complies with the provisions of Section 5.12 of this Agreement;

(iv) the documentation governing such Indebtedness shall not include any (x) representations and warranties (other than basic corporate representations and warranties and representations and warranties concerning the enforceability of the agreements governing the such financing), covenants (other than customary affirmative (e.g., corporate existence, insurance and compliance with laws) and reporting covenants), which in no event shall be more restrictive than the representations and warranties and covenants contained in the Note Documents, or (y) indemnities;

(v) the documentation governing such Indebtedness shall not require any amortization or mandatory prepayments; and

(vi) (w) the interest rate with respect to such Indebtedness, exclusive of any default interest rate margin (which shall be customary and in any event shall not exceed 2.0% per annum), shall not exceed 10.0% per annum, (x) there shall be no original issue discount (except to the extent of original issue discount issued in respect of an accreting obligation, which original issue discount shall not result in, together with any other interest (other than default interest) payable in respect of such Indebtedness, an interest rate in excess of that permitted pursuant to clause (w) above) or other upfront payments in connection with such Indebtedness, (y) interest payments shall be made no more frequently than quarterly and (z) no cash interest payments shall be permitted at any time that any Default or Event of Default is continuing.

"Permitted Third Party Bank" shall mean any bank or other financial institution with whom any Note Party maintains (i) a Controlled Account and with whom an Account Control Agreement has been executed or (ii) a Government Receivables Account and with whom a Government Receivables Account Agreement has been executed. As of the Closing Date, each of the banks and other financial institutions that are identified on Schedule 4.16 as an institution at which a Controlled Account or a Government Receivables Account is maintained by any Note Party shall be deemed to be a Permitted Third Party Bank.

"Person" shall mean any individual, partnership, firm, corporation, association, joint venture, limited liability company, trust or other entity, or any Governmental Authority.

"Plan" shall mean any "employee pension benefit plan" as defined in Section 3 of ERISA (other than a Multiemployer Plan) maintained or contributed to by (or to which there is or may be an obligation to contribute of) the Issuer, any of its Subsidiaries, or an ERISA Affiliate, and each such plan for the look-back period during which the Issuer, any of its Subsidiaries, or an ERISA Affiliate continues to be subject to liability, including contingent liability, for the plan under Title IV of ERISA.

"Prepayment Event" shall mean any sale, lease, assignment, transfer or other disposition by the Issuer or any of its Subsidiaries of any assets or property pursuant to Section 7.6(e) or Section 7.6(f).

"Prepayment Premium" shall mean, with respect to any optional prepayment of the Notes pursuant to Section 2.8(a), any mandatory prepayment of the Notes pursuant to Section 2.9(a) or (b) or any repayment of the Notes following the acceleration thereof pursuant to Section 8.1: (a) at any time prior to the second anniversary of the Closing Date, an amount equal to the Applicable Premium with respect to the principal amount of the Notes so prepaid or repaid; (b) at any time on or after the second anniversary of the Closing Date and prior to the third anniversary of the Closing Date, an amount equal to 4.0% of the principal amount of the Notes so prepaid or repaid; (c) at any time on or after the third anniversary of the Closing Date and prior to the fourth anniversary of the Closing Date, an amount equal to 2.0% of the principal amount of the Notes so prepaid or repaid; and (d) at any time on or after the fourth anniversary of the Closing Date, an amount equal to 0.0% of the principal amount of the Notes so prepaid or repaid; provided that no Prepayment Premium shall be required to be paid with respect to any optional prepayment of the Notes pursuant to Section 2.8(a) from Internally Generated Cash; provided, further, that the foregoing proviso shall (x) apply only to the prepayment of up to $50 million in aggregate principal amount of the Notes over the term of this Agreement and (y) for the avoidance of doubt, not apply in connection with the acceleration of the Obligations pursuant to Section 8.1.

"Profit Plan" shall mean, for any calendar year, an annual operating plan for the Issuer and its Subsidiaries, on a consolidated basis, setting forth (i) a statement of all material assumptions on which such annual operating plan is based, (ii) quarterly balance sheets, income statements and statements of cash flows for such calendar year, (iii) sales, gross profits, operating expenses, operating profit, cash flow projections, all prepared on the same basis and in similar detail as that on which operating results are reported (and in the case of cash flow projections, representing management's good faith estimates of future financial performance based on historical performance), and including plans for Capital Expenditures and facilities.

"Pro Forma Basis" shall mean (a) with respect to any Person, business, property or asset sold, transferred or otherwise disposed of, the exclusion from "Consolidated EBITDA" of the EBITDA (calculated in a manner substantially consistent with the definition of "Consolidated EBITDA" and giving effect to any adjustments made in accordance with such definition) for such Person, business, property or asset so disposed of during such period as if such disposition had been consummated on the first day of the applicable period and (b) with respect to any Target acquired in a Permitted Acquisition, the addition to "Consolidated EBITDA" of the EBITDA (calculated in a manner substantially consistent with the definition of "Consolidated EBITDA" but without giving effect to any adjustments made in accordance with such definition and, for the avoidance of doubt, not including any synergies or other cost savings) of such Target so acquired during such period as if such acquisition had been consummated on the first day of the applicable period, in each case, in accordance with GAAP.

"Pro Rata Share" shall mean with respect to any Commitment or Note of any Purchaser at any time, a percentage, the numerator of which shall be such Purchaser's Commitment (or if such Commitment has been terminated or expired or the Notes have been declared to be due and payable, such Purchaser's Notes), and the denominator of which shall be the sum of all Commitments of all Purchasers (or if such Commitments have been terminated or expired or the Notes have been declared to be due and payable, all Notes of all Purchasers).

"Purchaser-Related Hedge Provider" means any Person that, at the time it enters into a Hedging Transaction with any Note Party, (i) is a Purchaser or an Affiliate of a Purchaser and (ii) has provided prior written notice to the Collateral Agent which has been acknowledged by the Issuer of (x) the existence of such Hedging Transaction and (y) the methodology to be used by such parties in determining the obligations under such Hedging Transaction from time to time. In no event shall any Purchaser-Related Hedge Provider acting in such capacity be deemed a Purchaser for purposes hereof to the extent of and as to Hedging Obligations except that each reference to the term "Purchaser" in Article IX and Section 10.3(b) shall be deemed to include such Purchaser-Related Hedge Provider. In no event shall the approval of any such Person in its capacity as Purchaser-Related Hedge Provider be required in connection with the release or termination of any security interest or Lien of the Collateral Agent.

"Purchasers" shall have the meaning set forth in the introductory paragraph hereof and shall include each Purchaser that joins this Agreement pursuant to Section 10.4 and each Replacement Purchaser that joins this Agreement pursuant to Section 2.20.

"Real Estate" shall have the meaning set forth in Section 4.11(a).

"Real Estate Documents" shall mean, collectively, with respect to any Real Estate, (i) a Mortgage duly executed by each applicable Note Party, together with (A) title insurance policies in amounts reasonably satisfactory to the Required Purchasers (but not to exceed 100% of the fair market value of such Real Estate in any jurisdiction that imposes a material mortgage recording tax or 110% otherwise), current as-built ALTA/ACSM Land Title surveys certified to the Collateral Agent, zoning letters, building permits and certificates of occupancy, in each case relating to such Real Estate and reasonably satisfactory in form and substance to the Required Purchasers, (B) (x) "Life of Loan" Federal Emergency Management Agency Standard Flood Hazard determinations, (y) notices, in the form required under the Flood Insurance Laws, about special flood hazard area status and flood disaster assistance duly executed by each Note Party, and (z) if any improved real property encumbered by any Mortgage is located in a special flood hazard area, a policy of flood insurance that (1) covers such improved real property, (2) is written in an amount not less than the outstanding principal amount of the Indebtedness secured by such Mortgage reasonably allocable to such real property or the maximum limit of coverage made available with respect to the particular type of property under the Flood Insurance Laws, whichever is less, and (3) is otherwise on terms satisfactory to the Collateral Agent and the Required Purchasers and, (C) evidence that counterparts of such Mortgages have been recorded in all places to the extent necessary or desirable, in the reasonable judgment of the Required Purchasers, to create a valid and enforceable first priority Lien (subject to Permitted Encumbrances and Specified Permitted Liens) on such Real Estate in favor of the Collateral Agent for the benefit of the Secured Parties (or in favor of such other trustee as may be required or desired under local law), (D) an opinion of counsel in each state in which such Real Estate is located in form and substance and from counsel reasonably satisfactory to the Required Purchasers, (E) a duly executed Environmental Indemnity with respect thereto, and (F) such other reports, documents, instruments and agreements as the Required Purchasers shall reasonably request, each in form and substance reasonably satisfactory to Required Purchasers.

"Recipient" shall mean, as applicable, (a) the Collateral Agent and (b) any Purchaser.

"Regulation D" shall mean Regulation D of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.

"Regulation T" shall mean Regulation T of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.

"Regulation U" shall mean Regulation U of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.

"Regulation X" shall mean Regulation X of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.

"Regulation Y" shall mean Regulation Y of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.

"Reimbursement Approvals" shall mean any and all certifications, provider or supplier numbers, provider or supplier agreements (including Medicaid provider or supplier numbers, Medicaid provider or supplier agreements, Medicare provider or supplier numbers, and Medicare provider or supplier agreements), participation agreements, Accreditations, and/or any other agreements with or approvals by Medicaid, Medicare, 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.

"Related Parties" shall mean, with respect to any specified Person, such Person's Affiliates and the respective managers, administrators, trustees, partners, directors, officers, employees, agents, advisors, legal counsel, consultants or other representatives of such Person and such Person's Affiliates.

"Release" shall mean any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or within any building, structure, facility or fixture.

"Required Purchasers" shall mean, at any time, Purchasers holding more than 50% of the aggregate outstanding principal amount of the Notes at such time; provided that, to the extent there are two or more Purchasers that each hold at least 5% of the aggregate outstanding principal amount of the Notes at any time, Required Purchasers shall mean at least two Purchasers together holding more than 50% of the outstanding principal amount of the Notes at such time; provided, further, that, for purposes of the foregoing proviso, a Purchaser together with all of such Purchaser's Affiliates and Approved Funds shall be deemed to constitute a single Purchaser; provided, further, that, to the extent that any Purchaser is a Defaulting Purchaser, such Defaulting Purchaser and all of the Notes held by such Defaulting Purchaser shall be excluded for purposes of determining Required Purchasers.

"Requirement of Law" for any Person shall mean (i) the articles or certificate of incorporation, bylaws, partnership certificate and agreement, or limited liability company certificate of organization and agreement, as the case may be, and other organizational and governing documents of such Person, and (ii) any law, treaty, rule or regulation, or determination of a Governmental Authority, including, without limitation any Healthcare Laws, 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.

"Responsible Officer" shall mean any of the president, the chief executive officer, the chief operating officer, the chief financial officer, the general counsel, the treasurer or a vice president of the Issuer or such other representative of the Issuer as may be designated in writing by any one of the foregoing with the consent of the Required Purchasers (such consent not to be unreasonably withheld, conditioned or delayed). With respect to any Person that is a limited liability company or a limited partnership, such Person's managing member, sole member, sole manager or general partner, as the case may be, shall constitute a Responsible Officer.

"Responsible Officer of the Collateral Agent" shall mean an officer within Corporate Trust Services who shall have direct responsibility for the administration of this Agreement.

"Restricted Cash" shall mean, as of any date, all cash and Cash Equivalents held by the Issuer and its Subsidiaries that are legally or contractually restricted from being used to repay general obligations of the Issuer or any Subsidiary of the Issuer (including the Obligations) (provided that the terms of this Agreement, the other Note Documents and the Second Lien Note Documents shall not be deemed to contractually restrict the use of cash and Cash Equivalents by the Issuer and its Subsidiaries) or are otherwise subject to a Lien (except Liens created under the Collateral Documents, the Second Lien Collateral Documents and non-consensual Liens that arise by operation of law).

"Restricted Payment" shall mean, for any Person, (i) any dividend or distribution on any class of its Capital Stock, or (ii) any payment on account of, or the setting aside of assets for a sinking or other analogous fund for, the purchase, redemption, retirement, defeasance or other acquisition of (a) any shares of its Capital Stock, (b) any Subordinated Debt, (c) any options, warrants or other rights to purchase such Capital Stock or such Indebtedness, whether now or hereafter outstanding, or (d) any payment of management or similar fees.

"Routine Payor Audit" shall mean any payor audit conducted by a Governmental Authority or a Third Party Payor so long as the potential liability under such payor audit does not exceed $200,000 for each such payor audit.

"S&P" shall mean Standard & Poor's, a division of The McGraw-Hill Companies, Inc.

"Sanctioned Country" shall mean, at any time, a country, territory or region that is, or whose government is, the subject or target of any Sanctions.

"Sanctioned Person" shall mean, at any time, any Person with whom dealings are restricted or prohibited under Sanctions, including (i) any Person listed in any Sanctions-related list of designated Persons maintained by the United States (including by OFAC, the U.S. Department of the Treasury, or the U.S. Department of State), or by the United Nations Security Council, the European Union or any EU member state, Her Majesty's Treasury of the United Kingdom or any other relevant sanctions authority, (ii) any Person located, operating, organized or resident in a Sanctioned Country or (iii) any Person owned or controlled, directly or indirectly, by any such Person described in clause (i) or (ii) of this definition.

"Sanctions" shall mean sanctions or trade embargoes enacted, imposed, administered or enforced from time to time by (i) the U.S. government, including those administered by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), U.S. Department of State, or U.S. Department of Commerce, (ii) the United Nations Security Council, the European Union or any of its member states, Her Majesty's Treasury of the United Kingdom, (iii) Canada (or any provincial government) or (iv) any other relevant sanctions authority.

"Second Lien Collateral Agent" shall have the meaning assigned to the term "Collateral Agent" in the Second Lien Note Purchase Agreement.

"Second Lien Collateral Documents" shall mean the "Collateral Documents" under and as defined in the Second Lien Note Purchase Agreement.

"Second Lien Delayed Draw Notes" shall have the meaning assign to the term "Delayed Draw Notes" in the Second Lien Note Purchase Agreement.

"Second Lien Note Documents" shall mean the Second Lien Note Purchase Agreement and the other "Note Documents" as defined in the Second Lien Note Purchase Agreement, in each case, as amended, restated and/or modified from time to time in accordance with the terms thereof and of the First Lien/Second Lien Intercreditor Agreement.

"Second Lien Note Purchase Agreement" shall mean that certain Second Lien Note Purchase Agreement dated as of the Closing Date, by and among the Issuer, the financial institutions party thereto from time to time and Wells Fargo Bank, National Association, in its capacity as collateral agent thereunder, as the same may be amended, restated, supplemented, waived, extended or otherwise modified from time to time in accordance with the First Lien/Second Lien Intercreditor Agreement.

"Second Lien Notes" shall have the meaning assigned to the term "Notes" in the Second Lien Note Purchase Agreement.

"Second Lien Obligations" shall mean the "Obligations" under and as defined in the Second Lien Note Purchase Agreement.

"Second Lien Purchasers" shall mean the "Purchasers" under and as defined in the Second Lien Note Purchase Agreement.

"Secured Parties" shall mean the Collateral Agent, the Purchasers, the Purchaser-Related Hedge Providers and the Bank Product Providers.

"Securities Act" shall mean the Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

"Senior Notes" shall mean the unsecured 8.875% Senior Notes due 2021 issued by the Issuer pursuant to the Senior Notes Indenture, as amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms hereof and thereof.

"Senior Notes Indenture" shall mean that certain Indenture dated as of February 11, 2014, by and among the Issuer, the guarantors party thereto, and U.S. Bank National Association, as trustee, as amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms hereof and thereof.

"Solvent" shall mean, with respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including subordinated and contingent liabilities, of such Person; (b) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts and liabilities, including subordinated and contingent liabilities as they become absolute and matured; (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature; and (d) such Person is not engaged in a business or transaction, and is not about to engage in a business or transaction, for which such Person's property would constitute an unreasonably small capital. The amount of contingent liabilities (such as litigation, guaranties and pension plan liabilities) at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, represents the amount that would reasonably be expected to become an actual or matured liability.

"Specified Permitted Liens" shall mean (a) nonconsensual Liens arising by operation of law (including Permitted Encumbrances, but excluding Permitted Encumbrances securing Indebtedness), (b) Liens permitted by Section 7.2(e), Section 7.2(f) (except to the extent such Liens are required to be subordinated to the Liens securing the Obligations pursuant to such Section 7.2(f)) and Section 7.2(g), and (c) Liens on cash collateral for letters of credit permitted pursuant to Section 7.1(a)(xix).

"Specified Strategic Joint Venture" shall mean any Subsidiary (other than a Subsidiary formed for the purpose of holding assets of the Issuer and its Subsidiaries constituting the Issuer's and its Subsidiaries' PBM line of business) formed by the Issuer or any of its Subsidiaries with one or more third parties for the purpose of engaging in any Permitted Business, including any hospital joint venture or other joint venture providing pharmacy benefit management services.

"Stark Law" shall mean Section 1877 of the Social Security Act, as codified at 42 U.S.C. Section 1395nn (Prohibition Against Certain Referrals), as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

"Subordinated Debt" shall mean any Indebtedness of the Issuer or any Subsidiary that is by its terms subordinated in right of payment to the prior payment of the Obligations and the Second Lien Obligations in a manner reasonably acceptable to the Required Purchasers and the Required Purchasers (as defined in the Second Lien Note Purchase Agreement).

"Subsidiary" shall mean, with respect to any Person (the "parent") at any date, any corporation, partnership, joint venture, limited liability company, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, partnership, joint venture, limited liability company, association or other entity (i) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (ii) that is, as of such date, otherwise controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Unless otherwise indicated, all references to "Subsidiary" hereunder shall mean a Subsidiary of the Issuer.

"Subsidiary Note Party" shall mean any Subsidiary that executes or becomes a party to the Guaranty and Security Agreement (other than any Specified Strategic Joint Venture).

"Synthetic Lease" shall mean a lease transaction under which the parties intend that (i) the lease will be treated as an "operating lease" by the lessee pursuant to Accounting Standards Codification Sections 840-10 and 840-20, as amended, and (ii) the lessee will be entitled to various tax and other benefits ordinarily available to owners (as opposed to lessees) of like property.

"Synthetic Lease Obligations" shall mean, with respect to any Person, the sum of (i) all remaining rental obligations of such Person as lessee under Synthetic Leases which are attributable to principal and, without duplication, (ii) all rental and purchase price payment obligations of such Person under such Synthetic Leases assuming such Person exercises the option to purchase the lease property at the end of the lease term.

"Target" shall mean any other Person or business unit or asset group of any other Person acquired or proposed to be acquired in a Permitted Acquisition.

"Taxes" shall mean any and all present or future taxes, levies, imposts, duties, deductions, assessments, fees, charges or withholdings imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Third Party Payors" shall mean 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 third party arrangements, plans or programs.

"Third Party Payor Arrangements" shall mean arrangements, plans or programs with Third Party Payors for payment or reimbursement in connection with health care services, products or supplies.

"Trademark" shall have the meaning assigned to such term in the Guaranty and Security Agreement.

"Trademark Security Agreement" shall mean any Trademark Security Agreement executed by a Note Party owning registered Trademarks or applications for Trademarks in favor of the Collateral Agent for the benefit of the Secured Parties, both on the Closing Date and thereafter.

"Triggering Event of Default" shall mean an Event of Default of the type described in Section 8.1(a), 8.1(b), 8.1(g), or 8.1(h).

"Type", when used in reference to a Note or an Issuance, refers to whether the rate of interest on such Note, or on the Notes issued pursuant to such Issuance, is determined by reference to the LIBOR Rate or the Base Rate.

"Unfunded Pension Liability" of any Plan shall mean the amount, if any, by which the value of the accumulated plan benefits under the Plan, as determined pursuant to Section 4001(a)(16) of ERISA, determined on a plan termination basis in accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the fair market value of all Plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions).

"Uniform Commercial Code" or "UCC" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the creation or perfection of security interests.

"United States" or "U.S." shall mean the United States of America.

"U.S. Person" shall mean any Person that is a "United States person" as defined in Section 7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" shall have the meaning set forth in Section 2.17(f)(ii).

"Weighted Average Life to Maturity" shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing (i) the sum of the products obtained by multiplying (x) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (y) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment by (ii) the then outstanding principal amount of such Indebtedness.

"Withdrawal Liability" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Withholding Agent" shall mean the Issuer or any other Note Party, as applicable.

"Working Capital" shall mean, at any date, the sum of (a) all amounts (other than cash and Cash Equivalents) at such date that, in accordance with GAAP, would be classified as "current assets" on a consolidated balance sheet of the Issuer and its consolidated Subsidiaries, minus (b) all amounts (other than the current portion of long-term Indebtedness) at such date that, in accordance with GAAP, would be classified as "current liabilities" on a consolidated balance sheet of the Issuer and its consolidated Subsidiaries.

"Write-Down and Conversion Powers" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.2 Classifications of Notes and Issuances. For purposes of this Agreement, Notes may be classified and referred to by Type (e.g. "Eurodollar Note" or "Base Rate Note"). Issuances also may be classified and referred to by Type (e.g. "Eurodollar Issuance").

Section 1.3 Accounting Terms and Determination. Unless otherwise defined or specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP as in effect from time to time, applied on a basis consistent with the most recent financial statements of the Issuer delivered pursuant to Section 5.1(a) or Section 5.1(b) (subject to any statements made pursuant to Section 5.1(c)(iv)), subject to normal year-end adjustments and the absence of footnote disclosures in the case of interim financial statements; provided that if the Issuer notifies the Purchasers that the Issuer wishes to amend the definition or application of GAAP as used herein to eliminate the effect of any change in GAAP on the operation of any provision of this Agreement (or if the Required Purchasers notify the Issuer that the Required Purchasers wish to make such amendment), then the Issuer's compliance with the provisions of this Agreement shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or this Agreement is amended in a manner satisfactory to the Issuer and the Required Purchasers. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to (a) any election under Accounting Standards Codification Section 825-10 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of any Note Party or any Subsidiary of any Note Party at "fair value", as defined therein or (b) any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification Section 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof. In addition, all financial covenants contained herein shall be calculated without giving effect to any election under Statement of Financial Accounting Standards 159 (or any similar accounting principle) permitting a Person to value its financial liabilities at the fair value thereof. In addition, notwithstanding anything in this Agreement to the contrary, any change in GAAP occurring after the date hereof that would require operating leases to be treated similarly to capital leases shall not be given effect in the definition of Consolidated EBITDA or Indebtedness or any related definitions or in the computation of any financial ratio or requirement in any of the Note Documents.

Section 1.4 **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". In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the word "to" means "to but excluding". Unless the context requires otherwise (i) 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 it was originally executed or as it may from time to time be amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (ii) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (iii) the words "hereof", "herein" and "hereunder" and words of similar import shall be construed to refer to this Agreement as a whole and not to any particular provision hereof, (iv) all references to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles, Sections, Exhibits and Schedules to this Agreement and (v) all references to a specific time shall be construed to refer to the time in New York, New York, unless otherwise indicated. The words "knowledge of the Issuer" or any like term shall mean the actual knowledge of a Responsible Officer of the Issuer.

ARTICLE II

AMOUNT AND TERMS OF THE COMMITMENTS

Section 2.1 **General Description of Facilities.** Subject to and upon the terms and conditions herein set forth, each Purchaser severally agrees to purchase a Note from the Issuer on the Closing Date in an aggregate principal amount not exceeding such Purchaser's Commitment.

Section 2.2 **Commitments.** Subject to the terms and conditions set forth herein, each Purchaser severally and not jointly agrees to purchase from the Issuer, and the Issuer agrees to issue to each such Purchaser, on the Closing Date, a note in the form attached hereto as Exhibit B (each a "Note" and, collectively, the "Notes") in the amount set forth opposite such Purchaser's name on Schedule I under the heading "Note Commitment Amount". The Notes may be, from time to time, Base Rate Notes or Eurodollar Notes or a combination thereof. The execution and delivery of this Agreement by the Issuer and the satisfaction or waiver by the Purchasers of all conditions precedent set forth in Section 3.1 shall be deemed to constitute the Issuer's request to the Purchasers to purchase the Notes on the Closing Date. Amounts which are repaid or prepaid on the Notes may not be reborrowed.

Section 2.3 **Purchase of Notes.** No Purchaser shall be responsible for any default by any other Purchaser in its obligations hereunder, and each Purchaser shall be obligated to purchase a Note in an amount not to exceed the amount of such Purchaser's Commitment, regardless of the failure of any other Purchaser to purchase a Note hereunder.

Section 2.4 Interest Elections.

(a) Each Note initially shall be a Eurodollar Note. Thereafter, the Issuer may elect to convert all (but not less than all) of the outstanding Notes into a different Type or to continue such Notes, all as provided in this Section.

(b) To make an election pursuant to this Section, the Issuer shall give the Purchasers written notice (or telephonic notice promptly confirmed in writing), substantially in the form of Exhibit 2.4 attached hereto (a "Notice of Conversion/Continuation") (x) prior to 12:00 p.m. one (1) Business Day prior to the requested date of a conversion into Base Rate Notes and (y) prior to 12:00 p.m. three (3) Business Days prior to a continuation of or conversion into Eurodollar Notes. Each such Notice of Conversion/Continuation shall be irrevocable and shall specify (i) the effective date of the election made pursuant to such Notice of Conversion/Continuation, which shall be a Business Day and (ii) whether the Notes are to be Base Rate Notes or Eurodollar Notes.

(c) If, on the expiration of any Interest Period in respect of Eurodollar Notes, the Issuer shall have failed to deliver a Notice of Conversion/Continuation, then, unless the Notes are repaid as provided herein, the Issuer shall be deemed to have elected to convert the Notes to Base Rate Notes. The Notes may not be converted into, or continued as, Eurodollar Notes if a Default or an Event of Default exists, unless each of the Purchasers shall have otherwise consented in writing. No conversion of the Eurodollar Notes shall be permitted except on the last day of the Interest Period in respect thereof.

Section 2.5 Termination of Commitments. The Commitments shall terminate on the Closing Date upon the purchase and sale of the Notes pursuant to Section 2.2.

Section 2.6 Repayment of Notes.

(a) The Issuer unconditionally promises to pay to each Purchaser the then unpaid principal amount of the Note held by such Purchaser on each September 30, December 31, March 31 and June 30 of each Fiscal Year prior to the Maturity Date, commencing on September 30, 2019, in equal consecutive quarterly installments in an aggregate amount for each such quarterly installment equal to six hundred twenty-five thousandths of one percent (0.625%) of the aggregate principal amount of the Notes issued and sold on the Closing Date (as adjusted to reflect prepayments of Notes in accordance with this Agreement); provided that, to the extent not previously paid, the aggregate unpaid principal balance of the Notes shall be due and payable on the Maturity Date.

Section 2.7 Evidence of Indebtedness.

(a) Each Purchaser shall maintain in accordance with its usual practice appropriate records evidencing the Indebtedness of the Issuer to such Purchaser evidenced by each Note held by such Purchaser, including the amounts of principal and interest payable thereon and paid to such Purchaser from time to time under this Agreement. The entries made in such records shall be *prima facie* evidence of the existence and amounts of the obligations of the Issuer therein recorded; provided that the failure or delay of any Purchaser in maintaining or making entries into any such record or any error therein shall not in any manner affect the obligation of the Issuer to repay the Notes (both principal and unpaid accrued interest) held by such Purchaser in accordance with the terms of this Agreement.

Section 2.8 Optional Prepayments; Prepayment Premium.

(a) Subject to Section 2.8(b), the Issuer shall have the right at any time and from time to time to prepay the Notes, in whole or in part, by giving written notice (or telephonic notice promptly confirmed in writing) to the Purchasers no later than (i) in the case of any prepayment of Eurodollar Notes, 11:00 a.m. not less than three (3) Business Days prior to the date of such prepayment and (ii) in the case of any prepayment of Base Rate Notes, not less than one (1) Business Day prior to the date of such prepayment. Each such notice shall be irrevocable (provided that such notice (x) may be conditioned upon the happening of an event, in which case, such notice may be revoked to the extent that such event does not occur and (y) may be modified to extend the proposed date of such prepayment specified therein) and shall specify the proposed date of such prepayment and the principal amount of the Notes to be prepaid. If such notice is given, the aggregate amount specified in such notice shall be due and payable on the date designated in such notice, together with accrued interest to such date on the principal amount so prepaid in accordance with Section 2.10(d); provided that if a Eurodollar Note is prepaid on a date other than the last day of an Interest Period applicable thereto, the Issuer shall also pay all amounts required pursuant to Section 2.16. Each partial prepayment of the Notes shall be in a minimum principal amount of $5,000,000 and in increments of $1,000,000 in excess thereof. Each prepayment of the Notes shall be applied in accordance with Section 2.9(d).

(b) In the event that the Issuer prepays any Notes pursuant to clause (a) above, the Issuer shall pay to each applicable Purchaser the applicable Prepayment Premium with respect to the principal amount so prepaid.

Section 2.9 Mandatory Prepayments.

(a) Promptly (but in any event within five (5) Business Days) upon receipt by the Issuer or any of its Subsidiaries of Net Cash Proceeds in excess of $1,000,000 in the aggregate during any Fiscal Year from any Prepayment Event, the Issuer shall prepay the Obligations in an amount equal to such excess Net Cash Proceeds; provided that no prepayment under this Section 2.9(a) shall be required with respect to Net Cash Proceeds from any Prepayment Event so long as no Default or Event of Default is in existence at the time of receipt of such Net Cash Proceeds and, at the election of the Issuer, to the extent that such proceeds are reinvested in the business of the Issuer or any of its Subsidiaries within 365 days (or 366 days in a leap year) following receipt thereof or committed to be reinvested pursuant to a binding contract prior to the expiration of such 365 day (or 366 day in a leap year) period and actually reinvested within 180 days after the date of such binding contract. Any such prepayment shall be applied in accordance with clause (d) of this Section and shall be subject to the payment of the Prepayment Premium pursuant to clause (e) of this Section.

(b) Promptly (but in any event within five (5) Business Days) upon receipt by the Issuer or any of its Subsidiaries of Net Cash Proceeds from any issuance of Indebtedness by the Issuer or any of its Subsidiaries (other than any Indebtedness that is not prohibited to be issued or incurred hereunder), the Issuer shall prepay the Obligations in an amount equal to all such Net Cash Proceeds. Any such prepayment shall be applied in accordance with clause (d) of this Section and shall be subject to the payment of the Prepayment Premium pursuant to clause (e) of this Section.

(c) Commencing with the Fiscal Year ending December 31, 2017, no later than ten (10) days after the date on which the Issuer's annual audited financial statements for such Fiscal Year are required to be delivered pursuant to Section 5.1(a), (i) to the extent that the Consolidated Total Net Leverage Ratio as of the last day of such Fiscal Year is greater than or equal to 3.50:1.00, the Issuer shall prepay the Obligations in an amount equal to (x) 50% of Excess Cash Flow for such Fiscal Year minus (y) the aggregate amount of all voluntary prepayments of the Notes and Second Lien Notes made during such Fiscal Year, and (ii) to the extent that the Consolidated Total Net Leverage Ratio as of the last day of such Fiscal Year is less than 3.50:1.00, the Issuer shall prepay the Obligations in an amount equal to 0% of Excess Cash Flow for such Fiscal Year. Any such prepayment shall be applied in accordance with clause (d) of this Section. Any such prepayment shall be accompanied by a certificate signed by a Responsible Officer of the Issuer, certifying in reasonable detail the manner in which Excess Cash Flow and the resulting prepayment were calculated, which certificate shall be in form and substance reasonably satisfactory to the Required Purchasers.

(d) Any prepayments made by the Issuer pursuant to clause (a), (b) or (c) of this Section or pursuant to Section 2.8(a) shall be applied as follows: to the outstanding principal balance of the Notes, until the same shall have been paid in full, *pro rata* to the Purchasers based on their Pro Rata Shares of the Notes, and applied first to the immediately succeeding eight (8) scheduled installments of the Notes on a *pro rata* basis and thereafter to the remaining scheduled installments of the Notes on a *pro rata* basis (including, without limitation, the final payment due on the Maturity Date).

(e) In connection with any prepayment made by the Issuer pursuant to clause (a) or (b) of this Section, the Issuer shall pay the applicable Prepayment Premium with respect to the principal amount so prepaid. In connection with any prepayment made by the Issuer pursuant to clause (a), (b) or (c) of this Section, the Issuer shall pay any amounts due under Section 2.16 with respect to the principal amount so prepaid.

Section 2.10 Interest on Notes.

(a) The Issuer shall pay interest on (i) each Base Rate Note at the Base Rate plus the Applicable Margin in effect from time to time (the "Base Rate Interest Rate") and (ii) each Eurodollar Note at the LIBOR Rate for the applicable Interest Period in effect for such Note plus the Applicable Margin in effect from time to time (the "Eurodollar Interest Rate).

(b) Notwithstanding clause (a) of this Section, at the written request of the Required Purchasers if a Triggering Event of Default has occurred and is continuing, and automatically after acceleration of the Obligations or in connection with any Event of Default of the type described in Section 8.1(g) or 8.1(h), the Issuer shall pay interest ("Default Interest") (i) with respect to all Eurodollar Notes, at a rate *per annum* equal to 200 basis points above the otherwise applicable Eurodollar Interest Rate until the last day of such Interest Period, and thereafter, at a rate *per annum* equal to 200 basis points above the otherwise applicable Base Rate Interest Rate and (ii) with respect to all Base Rate Notes, at a rate *per annum* equal to 200 basis points above the otherwise applicable Base Rate Interest Rate, in each case, until such Triggering Event of Default has been waived in writing or the Required Purchasers have revoked the imposition of Default Interest (whichever occurs first).

(c) Interest on the outstanding principal amount of all Notes shall accrue from and including the date such Notes are issued and sold to but excluding the date of any repayment thereof. Interest on all outstanding Notes shall be payable monthly in arrears on the last day of each month, commencing on the last day of the first full month following the Closing Date, and on the Maturity Date. Interest on any Eurodollar Note which is converted into a Note of another Type or which is repaid or prepaid shall be payable on the date of such conversion or on the date of any such repayment or prepayment (on the amount repaid or prepaid) thereof. All Default Interest shall be payable on demand.

(d) The Required Purchasers shall determine each interest rate applicable to the Notes hereunder and shall promptly notify the Issuer and the Purchasers of such rate in writing (or by telephone, promptly confirmed in writing). Any such determination shall be conclusive and binding for all purposes, absent manifest error.

Section 2.11 Fees.

(a) The Issuer shall pay to the Collateral Agent for its own account fees in the amounts and at the times previously agreed upon in writing by the Issuer and the Collateral Agent.

(b) The Notes shall be issued with original issue discount equal to 1.00% of the original aggregate principal amount of the Notes.

(c) The Issuer shall pay on the Closing Date to the parties specified therein all amounts in the Ares Closing Payment Letter that are due and payable on the Closing Date.

Section 2.12 Computation of Interest and Fees. Interest hereunder on Base Rate Notes shall be computed on the basis of a year of 365 days (or 366 days in a leap year) and paid for the actual number of days elapsed (including the first day but excluding the last day). All other interest and all fees hereunder shall be computed on the basis of a year of 360 days and paid for the actual number of days elapsed (including the first day but excluding the last day). Each determination by the Required Purchasers of an interest rate or fee hereunder shall be made in good faith and, except for manifest error, shall be final, conclusive and binding for all purposes. The Required Purchasers shall, at the request of the Issuer, deliver to the Issuer a statement showing the quotations used by the Required Purchasers in determining any interest rate hereunder.

Section 2.13 Inability to Determine Interest Rates. If, prior to the commencement of any Interest Period for any Eurodollar Note:

(i) Any Purchaser shall have determined (which determination shall be conclusive and binding upon the Issuer) that, by reason of circumstances affecting the relevant interbank market, adequate means do not exist for ascertaining LIBOR for such Interest Period, or

(ii) the LIBOR Rate does not adequately and fairly reflect the cost to any Purchaser of purchasing or maintaining its Eurodollar Notes for such Interest Period,

such Purchaser shall give written notice (or telephonic notice, promptly confirmed in writing) to the Issuer and to each other Purchaser as soon as practicable thereafter. Until such Purchaser shall notify the Issuer and each other Purchaser that the circumstances giving rise to such notice no longer exist, (i) the obligations of such Purchaser to continue or convert outstanding Notes as or into Eurodollar Notes shall be suspended and (ii) all such affected Note shall be converted into Base Rate Notes on the last day of the then current Interest Period applicable thereto unless the Issuer prepays such Notes in accordance with this Agreement.

Section 2.14 Illegality. If any Change in Law shall make it unlawful or impossible for any Purchaser to purchase or maintain any Eurodollar Note and such Purchaser shall so notify the Issuer, until such Purchaser notifies the Issuer that the circumstances giving rise to such suspension no longer exist, the obligation of such Purchaser to continue or convert outstanding Notes as or into Eurodollar Notes shall be suspended. If the affected Eurodollar Note is then outstanding, such Note shall be converted to a Base Rate Note either (i) on the last day of the then current Interest Period applicable to such Eurodollar Note if such Purchaser may lawfully continue to maintain such Note to such date or (ii) immediately if such Purchaser shall determine that it may not lawfully continue to maintain such Eurodollar Note to such date. Notwithstanding the foregoing, the affected Purchaser shall, prior to giving such notice to the Issuer, designate a different Applicable Funding Office if such designation would avoid the need for giving such notice and if such designation would not otherwise be disadvantageous to such Purchaser in the good faith exercise of its discretion.

Section 2.15 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement that is not otherwise included in the determination of the LIBOR Rate hereunder against assets of, deposits with or for the account of, or credit extended by, any Purchaser (except any such reserve requirement reflected in the LIBOR Rate); or

(ii) impose on any Purchaser or the eurodollar interbank market any other condition affecting this Agreement or any Eurodollar Notes made by such Purchaser;

and the result of any of the foregoing is to increase the cost to such Purchaser of making, converting into, continuing or maintaining a Eurodollar Note or to reduce the amount received or receivable by such Purchaser hereunder (whether of principal, interest or any other amount),

then, from time to time, such Purchaser may provide the Issuer with written notice and demand with respect to such increased costs or reduced amounts, and within five (5) Business Days after receipt of such notice and demand the Issuer shall pay to such Purchaser such additional amounts as will compensate such Purchaser for any such increased costs incurred or reduction suffered.

(b) If any Purchaser shall have determined that on or after the date of this Agreement any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Purchaser's capital (or on the capital of the Parent Company of such Purchaser) as a consequence of its obligations hereunder to a level below that which such Purchaser or such Parent Company could have achieved but for such Change in Law (taking into consideration such Purchaser's policies or the policies of such Parent Company with respect to capital adequacy and liquidity), then, from time to time, such Purchaser may provide the Issuer with written notice and demand with respect to such reduced amounts, and within five (5) Business Days after receipt of such notice and demand the Issuer shall pay to such Purchaser such additional amounts as will compensate such Purchaser or such Parent Company for any such reduction suffered.

(c) A certificate of such Purchaser setting forth the amount or amounts necessary to compensate such Purchaser or the Parent Company of such Purchaser specified in clause (a) or (b) of this Section shall be delivered to the Issuer and shall be conclusive, absent manifest error.

(d) Failure or delay on the part of any Purchaser to demand compensation pursuant to this Section shall not constitute a waiver of such Purchaser's right to demand such compensation; provided that the Issuer shall not be required to compensate any Purchaser pursuant to this Section for any increased costs incurred or reductions suffered more than one hundred eighty (180) days prior to the date that such Purchaser notifies the Issuer of the Change in Law giving rise to such increased costs or reductions, and of such Purchaser's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the one hundred eighty (180) day period referred to above shall be extended to include the period of retroactive effect thereof).

Section 2.16 Funding Indemnity. In the event of (a) the payment of any principal of a Eurodollar Note other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion or continuation of a Eurodollar Note other than on the last day of the Interest Period applicable thereto, or (c) the failure by the Issuer to borrow, prepay, convert or continue any Eurodollar Note on the date specified in any applicable notice (regardless of whether such notice is withdrawn or revoked), then, in any such event, the Issuer shall compensate each Purchaser, within five (5) Business Days after written demand from such Purchaser, for any loss, cost or expense attributable to such event. In the case of a Eurodollar Note, such loss, cost or expense shall be deemed to include an amount determined by such Purchaser to be the excess, if any, of (A) the amount of interest that would have accrued on the principal amount of such Eurodollar Note if such event had not occurred at the LIBOR Rate applicable to such Eurodollar Note for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to convert or continue, for the period that would have been the Interest Period for such Eurodollar Note) over (B) the amount of interest that would accrue on the principal amount of such Eurodollar Note for the same period if the LIBOR Rate were set on the date such Eurodollar Note was prepaid or converted or the date on which the Issuer failed to convert or continue such Eurodollar Note. A certificate as to any additional amount payable under this Section submitted to the Issuer by any Purchaser shall be conclusive, absent manifest error.

Section 2.17 Taxes.

(a) Any and all payments by or on account of any obligation of the Issuer or any other Note Party hereunder or under any other Note Document shall be made free and clear of and without deduction or withholding for any Indemnified Taxes; provided that if any applicable law requires the deduction or withholding of any Tax from any such payment, then the applicable Withholding Agent shall make such deduction and timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Issuer or other Note Party, as applicable, shall be increased as necessary so that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section 2.17) the applicable Recipient shall receive an amount equal to the sum it would have received had no such deductions or withholdings been made.

(b) In addition, without limiting the provisions of clause (a) of this Section, the Issuer shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) The Issuer shall indemnify each Recipient (and, with respect to U.S. federal withholding taxes, if such Recipient is not the Beneficial Owner, the Beneficial Owner), within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes paid by such Recipient (or Beneficial Owner) on or with respect to any payment by or on account of any obligation of the Issuer or any other Note Party hereunder or under any other Note Document (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Issuer by the applicable Recipient (for its own account or on behalf of one or more Beneficial Owners) shall be conclusive, absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Issuer or any other Note Party to a Governmental Authority, the Issuer or other Note Party, as applicable, shall deliver to the Purchasers an 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 Required Purchasers.

(e) If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund, or a credit in lieu of a refund, of any Taxes or Other Taxes as to which it has been indemnified by the Issuer or with respect to which the Issuer has paid additional amounts pursuant to this Section 2.17, it shall pay to the Issuer an amount equal to such refund or credit (but only to the extent of indemnity payments made, or additional amounts paid, by the Issuer under this Section 2.17 with respect to the Taxes or Other Taxes giving rise to such refund) net of all out-of-pocket expenses of such Recipient and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the Issuer, upon the request of such Recipient, agrees to repay the amount paid over to the Issuer (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such Recipient in the event such Recipient is required to repay such refund to such Governmental Authority. This Section 2.17(e) shall not be construed to require a Recipient to make available its tax returns (or any other information relating to its taxes) to the Issuer or any other Person.

(f) Tax Forms.

(i) Any Purchaser that is a U.S. Person shall deliver to the Issuer and the Collateral Agent, on or prior to the date on which such Purchaser becomes a Purchaser under this Agreement (and from time to time thereafter upon the reasonable request of the Issuer), duly executed originals of IRS Form W-9 certifying, to the extent such Purchaser is legally entitled to do so, that such Purchaser is exempt from U.S. federal backup withholding tax.

(ii) Any Purchaser that is a Foreign Person and that is entitled to an exemption from or reduction of withholding tax under the Code or any treaty to which the United States is a party with respect to payments under this Agreement shall deliver to the Issuer and the Collateral Agent, at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law or reasonably requested by the Issuer 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 Purchaser that is a Foreign Person shall, to the extent it is legally entitled to do so, (w) on or prior to the date such Purchaser becomes a Purchaser under this Agreement, (x) on or prior to the date on which any such form or certification expires or becomes obsolete, (y) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause, and (z) from time to time upon the reasonable request by the Issuer, deliver to the Issuer and the Collateral Agent (in such number of copies as shall be requested by the Issuer), whichever of the following is applicable:

(A) if such Purchaser is claiming eligibility for benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Note Document, duly executed originals of IRS Form W-8BEN, or IRS Form W-8BEN-E or any successor form thereto, establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "interest" article of such tax treaty, and (y) with respect to any other applicable payments under any Note Document, duly executed originals of IRS Form W-8BEN, or IRS Form W-8BEN-E, or any successor form thereto, establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "business profits" or "other income" article of such tax treaty;

(B) duly executed originals of IRS Form W-8ECI, or any successor form thereto, certifying that the payments received by such Purchaser are effectively connected with such Purchaser's conduct of a trade or business in the United States;

(C) if such Purchaser is claiming the benefits of the exemption for portfolio interest under Section 871(h) or Section 881(c) of the Code, duly executed originals of IRS Form W-8BEN, IRS Form W-8-BEN-E, or any successor form thereto, together with a certificate (a "U.S. Tax Compliance Certificate") upon which such Purchaser certifies that (1) such Purchaser is not a bank for purposes of Section 881(c)(3)(A) of the Code, or the obligation of the Issuer hereunder is not, with respect to such Purchaser, a loan agreement entered into in the ordinary course of its trade or business, within the meaning of that Section, (2) such Purchaser is not a 10% shareholder of the Issuer within the meaning of Section 871(h)(3) or Section 881(c)(3)(B) of the Code, (3) such Purchaser is not a controlled foreign corporation that is related to the Issuer within the meaning of Section 881(c)(3)(C) of the Code, and (4) the interest payments in question are not effectively connected with a U.S. trade or business conducted by such Purchaser; or

(D) if such Purchaser is not the Beneficial Owner (for example, a partnership or a participating Purchaser granting a typical participation), duly executed originals of IRS Form W-8IMY, or any successor form thereto, accompanied by IRS Form W-9, IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate, and/or other certification documents from each Beneficial Owner, as applicable.

(iii) Each Purchaser that is a Foreign Person shall, to the extent it is legally entitled to do so, deliver to the Issuer and the Collateral Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Purchaser becomes a Purchaser under this Agreement (and from time to time thereafter upon the reasonable request of the Issuer), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Issuer to determine the withholding or deduction required to be made.

(iv) If a payment made to a Purchaser under any Note Document would be subject to U.S. federal withholding tax imposed by FATCA if such Purchaser were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Purchaser shall deliver to the Issuer and the Collateral Agent at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with its obligations under FATCA and to determine that such Purchaser has complied with such Purchaser's obligations under FATCA or to determine the amount to deduct and withhold from such payment; provided that, solely for purposes of this clause (E), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(v) Each Purchaser agrees that if any form or certification it previously delivered under this Section expires or becomes obsolete or inaccurate in any respect, such Purchaser shall update such form or certification; however, if such Purchaser is not legally entitled to provide an updated form or certification, it shall promptly notify the Issuer and the Collateral Agent of its inability to update such form or certification.

Section 2.18 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) The Issuer shall make each payment required to be made by it hereunder (whether of principal, Prepayment Premium, premium interest or fees, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to 2:00 p.m. on the date when due, in immediately available funds, free and clear of any defenses, rights of set-off, counterclaim, or withholding or deduction of taxes. Any amounts received after such time on any date may, in the discretion of the applicable Person entitled thereto, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments owing to any Purchaser shall be made to such Purchaser on a pro rata basis, and all such payments owing to the Collateral Agent shall be made to the Collateral Agent, in each case, to such accounts as may be specified by the applicable Person not less than five (5) days before the applicable payment is due (provided that, if a Purchaser or the Collateral Agent shall not have provided any such notice, such payment shall be made to the account most recently identified by such Purchaser or the Collateral Agent), except that payments pursuant to Sections 2.15, 2.16, 2.17 and 10.3 shall be made directly to the Persons entitled thereto. If any payment hereunder shall be due on a day that is not a Business Day, 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 made payable for the period of such extension. All payments hereunder shall be made in Dollars.

(b) If at any time insufficient funds are received by and available to the Purchasers and the Collateral Agent to pay fully all amounts of principal, interest, Prepayment Premiums, premiums and fees then due hereunder, such funds shall be applied as follows: first, to all amounts owed to the Collateral Agent then due and payable pursuant to any of the Note Documents; second, to all reimbursable expenses of the Purchasers then due and payable pursuant to any of the Note Documents, pro rata to the Purchasers based on their respective pro rata shares of such fees and expenses; third, to all accrued interest, Prepayment Premiums, premiums and fees then due and payable hereunder, pro rata to the Purchasers based on their respective pro rata shares of such interest, Prepayment Premiums, premiums and fees; and fourth, to all principal of the Notes then due and payable hereunder, pro rata to the parties entitled thereto based on their respective pro rata shares of such principal.

(c) If any Purchaser shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Notes that would result in such Purchaser receiving payment of a greater proportion of the aggregate amount of its Notes, Prepayment Premium, premium and accrued interest and fees thereon than the proportion received by any other Purchaser with respect to its Notes, then the Purchaser receiving such greater proportion shall purchase (for cash at face value) participations in the Notes of other Purchasers to the extent necessary so that the benefit of all such payments shall be shared by the Purchasers ratably in accordance with the aggregate amount of principal of, Prepayment Premiums, premiums, and accrued interest on their respective Notes; 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 clause shall not be construed to apply to any payment made by the Issuer pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Purchaser) or any payment obtained by a Purchaser as consideration for the assignment of or sale of a participation in any of its Notes to any assignee or participant, other than to the Issuer or any Subsidiary or Affiliate thereof (as to which the provisions of this clause shall apply). The Issuer consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Purchaser acquiring a participation pursuant to the foregoing arrangements may exercise against the Issuer rights of set-off and counterclaim with respect to such participation as fully as if such Purchaser were a direct creditor of the Issuer in the amount of such participation.

Section 2.19 Mitigation of Obligations. If any Purchaser requests compensation under Section 2.15, or if the Issuer is required to pay any additional amount to any Purchaser or any Governmental Authority for the account of any Purchaser pursuant to Section 2.17, then such Purchaser shall use reasonable efforts to designate a different funding office for purchasing or booking its Notes hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Purchaser, such designation or assignment (i) would eliminate or reduce amounts payable under Section 2.15 or Section 2.17, as the case may be, in the future and (ii) would not subject such Purchaser to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Purchaser. The Issuer hereby agrees to pay all reasonable and documented (in summary form) costs and expenses incurred by any Purchaser in connection with such designation or assignment.

Section 2.20 Replacement of Purchasers. If (a) any Purchaser requests compensation under Section 2.15, or if the Issuer is required to pay any additional amount to any Purchaser or any Governmental Authority for the account of any Purchaser pursuant to Section 2.17, (b) any Purchaser is a Defaulting Purchaser, or (c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 10.2(b), the consent of Required Purchasers shall have been obtained but the consent of one or more of such other Purchasers (each a "Non-Consenting Purchaser") whose consent is required shall not have been obtained, then the Issuer may, at its sole expense and effort, upon notice to such Purchaser, require such Purchaser to assign and delegate, without recourse (in accordance with and subject to the restrictions set forth in Section 10.4(b)), all of its interests, rights (other than its existing rights to payments pursuant to Section 2.15 or 2.17, as applicable) and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Purchaser) (a "Replacement Purchaser"); provided that (i) such Purchaser shall have received payment of an amount equal to the outstanding principal amount of all Notes owed to it, accrued interest thereon, accrued fees, the Prepayment Premium (other than in the case of a Non-Consenting Purchaser) with respect to the aggregate principal amount of the Notes being assigned (calculating such Prepayment Premium as if such Notes had been prepaid on the date of such assignment) and all other amounts payable to it hereunder from the assignee (in the case of such outstanding principal and accrued interest) and from the Issuer (in the case of all other amounts), (ii) in the case of a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments, (iii) such assignment does not conflict with applicable law, and (iv) in the case of a Non-Consenting Purchaser, each Replacement Purchaser shall consent, at the time of such assignment, to each matter in respect of which such terminated Purchaser was a Non-Consenting Purchaser. A Purchaser shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Purchaser or otherwise, the circumstances entitling the Issuer to require such assignment and delegation cease to apply.

Section 2.21 Defaulting Purchasers.

(a) Defaulting Purchaser Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Purchaser becomes a Defaulting Purchaser, then, until such time as such Purchaser is no longer a Defaulting Purchaser, to the extent permitted by applicable law:

(i) Such Defaulting Purchaser's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Purchasers and in Section 10.2.

(b) Defaulting Purchaser Cure. If the Required Purchasers and the Issuer agree in writing that a Purchaser is no longer a Defaulting Purchaser, the Issuer will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Purchaser will cease to be a Defaulting Purchaser; provided that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Purchaser to Purchaser will constitute a waiver or release of any claim of any party hereunder arising from that Purchaser's having been a Defaulting Purchaser.

Section 2.22 Legend. Each Note shall bear the following legend:

THIS NOTE WAS ISSUED IN A PRIVATE PLACEMENT, WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT") OR THE SECURITIES LAWS OF ANY STATE, AND MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS COVERING THE TRANSFER OR PURSUANT TO AN APPLICABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF SUCH ACT AND SUCH LAWS.

Section 2.23 **Transfer and Exchange of Notes.** Upon surrender of any Note to the Issuer at the address and to the attention of the designated officer, for registration of transfer or exchange (and in the case of a surrender for registration of transfer accompanied by a written instrument of transfer duly executed by the registered Purchaser or such Purchaser's attorney duly authorized in writing and accompanied by the relevant name, address and other information for notices of each transferee of such Note or part thereof) pursuant to Section 10.4(b), within ten (10) Business Days thereafter, the Issuer shall execute and deliver, at the Issuer's expense (except as provided below), one or more new Notes (as requested by the Purchaser) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Subject to Section 10.4, in the case of any assignment of a Note, each such new Note shall be payable to such Person as such Purchaser may request and shall be substantially in the form of Exhibit B. Each such new Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. The Issuer may require payment of a sum sufficient to cover any stamp tax or governmental charge imposed in respect of any such transfer of Notes. Each transferee, by its acceptance of a Note registered in its name (or the name of its nominee) will be deemed to have made the representations set forth in Section 2.25.

Section 2.24 **Replacement of Notes.** Upon receipt by the Issuer at the address and to the attention of the designated officer of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note, and

(a) in the case of loss, theft or destruction, an indemnity reasonably satisfactory to it (provided, that, if the Purchaser is, or is a nominee for, an original purchaser or another Purchaser with a minimum net worth of at least $100,000,000 or a "qualified institutional buyer" as defined in Rule 144A(a)(1) under the Securities Act, such Person's own unsecured agreement of indemnity shall be deemed to be satisfactory), or

(b) in the case of mutilation, upon surrender and cancellation thereof,

within ten (10) Business Days thereafter, the Issuer at its own expense shall execute and deliver, in lieu thereof, a new Note in an aggregate principal amount equal to the unpaid principal amount of the Note to be replaced, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

Section 2.25 **Representations of Purchasers.** Each Purchaser, severally and not jointly, hereby represents and warrants to the Issuer that, as of the Closing Date and immediately following the closing of the transactions contemplated under this Agreement, the following are true and correct: (a) such Purchaser is not acquiring the Notes to be purchased by it hereunder with a view to or for sale or resale in connection with any distribution thereof within the meaning of the Securities Act, (b) such Purchaser (i) is an "accredited investor" as defined in Rule 501 promulgated under the Securities Exchange Act of 1934 as in effect as of the Closing Date, and (ii) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment in the Notes being purchased by it and (c) such Purchaser understands that the Notes have not been registered under the Securities Act and may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that the Issuer is not required to register the Notes. The purchase of the Notes by each Purchaser on the Closing Date shall constitute its confirmation of the foregoing representations and warranties. Each Purchaser understands that such Notes are being sold to it in a transaction which is exempt from the registration requirements of the Securities Act, and that, in making the representations and warranties contained in Section 4.25, the Issuer is relying, to the extent applicable, upon the representations and warranties made by the Purchasers herein.

Section 2.26 **Prepayment Premium.** Payment of any Prepayment Premium hereunder constitutes liquidated damages and not a penalty, and the actual amount of damages to the Purchasers or profits lost by the Purchasers as a result of the relevant prepayment or repayment would be impracticable and extremely difficult to ascertain. Accordingly, the Prepayment Premium hereunder is provided by mutual agreement of the Issuer and the Purchasers as a reasonable estimation and calculation of such actual lost profits and other actual damages of the Purchasers. Without limiting the generality of the foregoing, it is understood and agreed that upon the occurrence of any optional prepayment of the Notes pursuant to Section 2.8(a), any mandatory prepayment of the Notes pursuant to Section 2.9(a) or (b) or repayment of the Notes following acceleration pursuant to Section 8.1 (including an automatic acceleration under clause (g) or (h) of Section 8.1, or to the extent the Notes otherwise become due and payable prior to their maturity as provided in Section 8.1), except as expressly set forth in the definition of "Prepayment Premium," the Prepayment Premium (if any) shall be due and payable as though any prepaid or repaid Notes were voluntarily prepaid as of such date and shall constitute part of the Obligations secured by the Collateral. The Prepayment Premium shall also be payable in the event the Notes are satisfied or released by foreclosure (whether by power of judicial proceeding or otherwise), deed in lieu of foreclosure or by any other means. THE ISSUER HEREBY EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR OTHER LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING PREPAYMENT PREMIUM IN CONNECTION WITH ANY SUCH EVENT. The Issuer expressly agrees (to the fullest extent it may lawfully do so) that with respect to the Prepayment Premium payable under the terms of this Agreement: (i) the Prepayment Premium is reasonable and is the product of an arm's length transaction between sophisticated business parties, ably represented by counsel; (ii) the Prepayment Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (iii) there has been a course of conduct between the Purchasers and the Note Parties giving specific consideration in this transaction for such agreement to pay the Prepayment Premium; and (iv) the Note Parties shall be estopped hereafter from claiming differently than as agreed to in this paragraph. The Issuer expressly acknowledges that its agreement to pay the Prepayment Premium as herein described is a material inducement to the Purchasers to provide the Commitments and purchase the Notes.

ARTICLE III

CONDITIONS PRECEDENT TO PURCHASE OF NOTES

Section 3.1 **Conditions to Effectiveness.** The obligations of the Purchasers to purchase the Notes shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 10.2):

(a) The Collateral Agent and the Purchasers shall have received payment of all fees, expenses and other amounts due and payable on or prior to the Closing Date, to the extent invoiced in reasonable detail at least one (1) Business Day prior to the Closing Date, including, without limitation, reimbursement or payment of all reasonable and documented (in summary form) costs and expenses of the Collateral Agent (including, but not limited to, attorneys' fees and costs), the Purchasers and their Affiliates, in each case, required to be reimbursed or paid by the Issuer hereunder, under any other Note Document, the Fee Letters, the Commitment Letter and any other agreement with the Collateral Agent or the any Purchaser.

(b) The Collateral Agent and the Purchasers (or their respective counsels) shall have received the following, each to be in form and substance reasonably satisfactory to the Collateral Agent and the Purchasers:

(i) a counterpart of this Agreement signed by or on behalf of each party hereto;

(ii) a certificate of the Secretary or Assistant Secretary (or other comparable Responsible Officer) of each Note Party in substantially the form of Exhibit 3.1(b)(ii), attaching and certifying copies of its bylaws, or partnership agreement or limited liability company agreement, and of the resolutions of its Governing Body, or comparable organizational documents and authorizations, authorizing the execution, delivery and performance of the Note Documents to which it is a party and certifying the name, title and true signature of each officer of such Note Party executing the Note Documents to which it is a party;

(iii) certified copies of the articles or certificate of incorporation, certificate of organization or limited partnership, or other registered organizational documents of each Note Party, together with certificates of good standing or existence, as may be available from the Secretary of State of (A) the jurisdiction of organization of such Note Party and (B) each other jurisdiction where such Note Party is required to be qualified to do business as a foreign corporation where the failure to be so qualified would reasonably be expected to have a Material Adverse Effect;

(iv) a written opinion of Dechert LLP, counsel to the Note Parties, and, if reasonably requested by the Required Purchasers, customary local counsel opinions with respect to certain Note Parties each addressed to the Collateral Agent and each of the Purchasers, and covering such matters relating to the Note Parties, the Note Documents and the transactions contemplated therein as the Collateral Agent or the Required Purchasers shall reasonably request;

(v) a certificate in substantially the form of Exhibit 3.1(b)(v), dated the Closing Date and signed by a Responsible Officer, certifying that after giving effect to the purchase of the Notes, (x) since December 31, 2016, no event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singularly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences whether or not related, that has resulted in a Material Adverse Effect has occurred, (y) at the time of and immediately after giving effect to the purchase and sale of the Notes hereunder, the representations and warranties set forth in this Agreement and the other Note Documents shall be true and correct in all material respects (other than those representations and warranties (i) that are expressly qualified by a Material Adverse Effect or other materiality, in which case such representations and warranties shall be true and correct in all respects or (ii) that expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date), and (z) at the time of and immediately after giving effect to the purchase and sale of the Notes hereunder, no Default or Event of Default shall exist;

(vi) a report setting forth the sources and uses of the proceeds of the Notes;

(vii) the ABDC Intercreditor Agreement, duly executed and delivered by the parties thereto;

(viii) certified copies of all material consents, approvals, authorizations, registrations, filings and orders required to be made or obtained under any Requirement of Law, or by any material Contractual Obligation of any Note Party, in connection with the execution, delivery, performance, validity and enforceability of the Note Documents or any of the transactions contemplated thereby, if any, and such consents, approvals, authorizations, registrations, filings and orders shall be in full force and effect and all applicable waiting periods shall have expired,;

(ix) copies of (A) the financial statements described in Section 4.4(a) and (B) the Issuer and its Subsidiaries' statement of profit and loss for May 2017;

(x) the Guaranty and Security Agreement, duly executed by the Issuer and each of its Domestic Subsidiaries (but excluding any Specified Strategic Joint Venture (in each case, if formed prior to the Closing Date)), together with (A) UCC financing statements and other applicable documents under the laws of all necessary or appropriate jurisdictions with respect to the perfection of the Liens granted under the Guaranty and Security Agreement, as reasonably requested by the Collateral Agent, acting at the direction of the Required Purchasers, or the Required Purchasers in order to perfect such Liens, duly authorized by the Note Parties, (B) copies of favorable UCC, tax, judgment and fixture lien search reports in all necessary or appropriate jurisdictions and under all legal and trade names of the Note Parties, as reasonably requested by the Collateral Agent, acting at the direction of the Required Purchasers, or the Required Purchasers, indicating that there are no prior Liens on any of the Collateral other than Specified Permitted Liens and Liens to be released on the Closing Date, (C) an Information and Collateral Disclosure Certificate, duly completed and executed by the Note Parties, (D) as necessary, duly executed Patent Security Agreements, Trademark Security Agreements and Copyright Security Agreements, and (E) original certificates evidencing all issued and outstanding shares of Capital Stock of all Subsidiaries owned directly by any Note Party (or, in the case of any Foreign Subsidiary directly owned by a Note Party, not more than 65% of the issued and outstanding voting Capital Stock of such Foreign Subsidiary), in each case, to the extent certificated prior to the Closing Date, and related stock or membership interest powers or other appropriate instruments of transfer executed in blank;

(xi) a summary, which may include a flow chart and summary of the Note Parties' and their Subsidiaries' cash management system, setting forth in reasonable detail the principal bank accounts of the Note Parties and their Subsidiaries where any cash balances and proceeds of receivables are collected, aggregated and/or maintained in the ordinary course of business, other than Excluded Accounts;

(xii) subject to Section 5.16 and the Issuer's use of commercially reasonable efforts, with respect to the chief executive office of the Issuer and each additional leased property where books or records are stored or located, a copy of the underlying lease, as applicable, and a Collateral Access Agreement from the landlord of such leased property; provided that if such Note Party is unable to deliver any such Collateral Access Agreement after using its commercially reasonable efforts to do so, the Required Purchasers shall waive the foregoing requirement in their reasonable discretion;

(xiii) copies of duly executed payoff letters with respect to any existing Indebtedness in respect of the Existing Credit Agreement and the other Loan Documents (as defined in the Existing Credit Agreement) and the Existing Priming Credit Agreement and the other Loan Documents (as defined in the Existing Priming Credit Agreement), together with (A) UCC-3 or other appropriate termination statements releasing all liens of the existing lenders upon any of the personal property of the Issuer and its Subsidiaries and authorizations to file such UCC-3s, (B) cancellations and releases releasing all liens of the existing lenders upon any real property owned by the Issuer and its Subsidiaries, and (C) any other releases, terminations or other documents reasonably required by the Required Purchasers to evidence the payoff of such Indebtedness;

(xiv) the First Lien/Second Lien Intercreditor Agreement, duly executed and delivered by the parties thereto;

(xv) (A) certificates of insurance describing the types and amounts of insurance (property and liability) maintained by any of the Note Parties, in each case naming the Collateral Agent as loss payee or additional insured, as the case may be, and (B) subject to Section 5.16, a lender's loss payable endorsement (in the case of each of the foregoing clauses (A) and (B), other than with respect to any director and officer indemnification policies, workers' compensation policies and any policies that provide coverage for property that does not constitute Collateral);

(xvi) documentation and information required by regulatory authorities under applicable "know your customer" and anti-money laundering laws at least five (5) Business Days prior to the Closing Date to the extent that such documentation and information was requested by the Collateral Agent or any Purchaser at least ten (10) days prior to the Closing Date; and

(xvii) a certificate, dated the Closing Date and signed by a Responsible Officer of the Issuer on behalf of each Note Party, confirming that after giving effect to the execution and delivery of the Note Documents, the incurrence on the Closing Date of the Notes (and the use of proceeds thereof on the Closing Date), and the other transactions contemplated herein to occur on the Closing Date, the Issuer and its Subsidiaries on a consolidated basis are Solvent.

(c) The Note Parties shall have used commercially reasonable efforts to deliver Account Control Agreements and Government Receivables Account Agreements, duly executed by each Permitted Third Party Bank and the applicable Note Party to the Collateral Agent and the Purchasers; provided that, if such Account Control Agreements and Government Receivables Account Agreements are not delivered by the Closing Date, the applicable Note Party shall deliver such Account Control Agreements and Government Receivables Account Agreements within ninety (90) days following the Closing Date.

(d) There shall be no Indebtedness for borrowed money of the Issuer or any of its Subsidiaries to any Person, other than the Notes, the Second Lien Notes, the Senior Notes and other Indebtedness reasonably satisfactory to the Purchasers.

(e) There shall not be any pending or threatened in writing litigation, investigation or other proceedings or inquiry (private or governmental) seeking to enjoin the transactions contemplated by this Agreement and the other Note Documents.

(f) The Issuer shall have received the cash proceeds of the purchase of the Second Lien Notes.

(g) (i) The Issuer shall have complied in all material respects with and be in compliance in all material respects with all of the of terms and conditions of the Commitment Letter and the Ares Closing Payment Letter and (b) the representations and warranties of the Issuer set forth under the heading "Evaluation Material" in the Commitment Letter shall be true and correct in all material respects (other than those representations and warranties that are expressly qualified by materiality, in which case such representations and warranties shall be true and correct in all respects) as of the Closing Date.

Without limiting the generality of the provisions of this Section, for purposes of determining compliance with the conditions specified in this Section, each Purchaser that has signed this Agreement shall be deemed to have consented to, approved of, accepted or been satisfied with each document or other matter required thereunder to be consented to, approved by or acceptable or satisfactory to a Purchaser unless the Issuer shall have received notice from such Purchaser prior to the proposed Closing Date specifying its objection thereto.

Section 3.2 Delivery of Documents. All of the Note Documents, certificates and other documents and papers referred to in this Article, unless otherwise specified, shall be delivered to each of the Purchasers and shall be in form and substance reasonably satisfactory in all respects to each of the Purchasers.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

The Issuer represents and warrants to the Collateral Agent and each Purchaser as follows:

Section 4.1 Existence; Power. The Issuer and each of its Subsidiaries (i) is duly organized, validly existing and in good standing as a corporation, partnership or limited liability company under the laws of the jurisdiction of its organization, (ii) has all requisite power and authority to carry on its business as now conducted, and (iii) is duly qualified to do business, and is in good standing, in each jurisdiction where such qualification is required, except where a failure to be so qualified would not reasonably be expected to result in a Material Adverse Effect.

Section 4.2 Organizational Power; Authorization. The execution, delivery and performance by each Note Party of the Note Documents to which it is a party are within such Note Party's organizational powers and have been duly authorized by all necessary organizational and, if required, shareholder, partner or member action. Each of this Agreement and the other Note Documents has been duly executed and delivered by the Issuer and the other Note Parties party thereto and constitutes valid and binding obligations of the Issuer or such Note Party (as the case may be), enforceable against it in accordance with their respective terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

Section 4.3 Governmental Approvals; No Conflicts. The execution, delivery and performance by each Note Party of the Note Documents to which it is a party (a) do not require any consent or approval of, registration or filing with, or any action by, any Governmental Authority or any Person with respect to which the Issuer or any of its Subsidiaries has any Contractual Obligation, except those as have been obtained or made and are in full force and effect and except for filings necessary to perfect or maintain perfection of the Liens created under the Note Documents, (b) will not violate any Requirement of Law applicable to the Issuer or any of its Subsidiaries or any judgment, order or ruling of any Governmental Authority, (c) will not violate or result in a default under any material Contractual Obligation of the Issuer or any of its Subsidiaries or any of its assets or give rise to a right thereunder to accelerate the obligations of the Issuer or any of its Subsidiaries thereunder (whether accomplished by a mandatory prepayment, a redemption, or otherwise) and (d) will not result in the creation or imposition of any Lien on any asset of the Issuer or any of its Subsidiaries, except Liens (if any) created under the Note Documents.

Section 4.4 Financial Statements; Material Adverse Effect.

(a) The Issuer has furnished to each Purchaser (i) the audited consolidated balance sheet of the Issuer and its Subsidiaries as of December 31, 2016, and the related audited consolidated statements of income, shareholders' equity and cash flows for the Fiscal Year then ended, prepared by Ernst & Young LLP and (ii) the unaudited consolidated balance sheet of the Issuer and its Subsidiaries as of March 31, 2017, and the related unaudited consolidated statements of income and cash flows for the Fiscal Quarter and year-to-date period then ended, certified by a Responsible Officer. Such financial statements fairly present in all material respects the consolidated financial condition of the Issuer and its Subsidiaries as of such dates and the consolidated results of operations for such periods in conformity with GAAP (as in effect at the time such financial statements were prepared and subject to Section 1.3) consistently applied (except as expressly noted therein), subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii). All Profit Plans delivered to the Purchasers after the Closing Date pursuant to Section 5.1(e) have been prepared by the Issuer in good faith based on assumptions believed by the Issuer to be reasonable at the time made; provided that it is expressly understood and agreed that financial projections (including all Profit Plans) are not to be viewed as facts, are inherently uncertain and are not a guarantee of financial performance and actual results may differ from financial projections and such differences may be material.

(b) Since December 31, 2016, there have been no changes with respect to, or event affecting, the Issuer and its Subsidiaries which have had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

Section 4.5 Litigation and Environmental Matters.

(a) No litigation, investigation or proceeding (including any whistleblower action) of or before any arbitrators or Governmental Authorities is pending against or, to the knowledge of the Issuer, threatened in writing against the Issuer or any of its Subsidiaries (i) that would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect or (ii) which in any manner draws into question the validity or enforceability of this Agreement or any other Note Document.

(b) Except as would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, neither the Issuer nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

Section 4.6 Compliance with Laws and Agreements. Except for non-compliance which would not reasonably be expected to result in a Material Adverse Effect, the Issuer and each of its Subsidiaries is in compliance with (a) all Requirements of Law and all judgments, decrees and orders of any Governmental Authority and (b) all Material Agreements.

Section 4.7 Investment Company Act. Neither the Issuer nor any of its Subsidiaries is (a) an "investment company" or is "controlled" by an "investment company", as such terms are defined in, or subject to regulation under, the Investment Company Act of 1940, as amended and in effect from time to time, or (b) otherwise subject to any other regulatory scheme limiting its ability to incur debt or requiring any approval or consent from, or registration or filing with, any Governmental Authority in connection therewith.

Section 4.8 **Taxes.** The Issuer and its Subsidiaries and each other Person for whose taxes the Issuer or any of its Subsidiaries could become liable have timely filed or caused to be filed all Federal income tax returns and all other material tax returns that are required to be filed by them, and have paid all taxes shown to be due and payable on such returns or on any assessments made against it or its property and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, except where the same are currently being contested in good faith by appropriate proceedings and for which the Issuer or such Subsidiary, as the case may be, has set aside on its books adequate reserves in accordance with GAAP. The charges, accruals and reserves on the books of the Issuer and its Subsidiaries in respect of such taxes are adequate, and no tax liabilities that could be materially in excess of the amount so provided are anticipated.

Section 4.9 **Margin Regulations.** None of the proceeds of any of the Notes will be used, directly or indirectly, for "purchasing" or "carrying" any "margin stock" within the respective meanings of each of such terms under Regulation U or for any purpose that violates the provisions of Regulation T, Regulation U or Regulation X. Neither the Issuer nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying "margin stock".

Section 4.10 **ERISA.** Each Plan is in substantial compliance in form and operation with its terms and with ERISA and the Code (including, without limitation, the Code provisions compliance with which is necessary for any intended favorable tax treatment) and all other applicable laws and regulations, except as would not reasonably be expected to have a Material Adverse Effect. Each Plan (and each related trust, if any) which is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that it meets the requirements of Sections 401(a) and 501(a) of the Code covering all applicable tax law changes, or is comprised of a master or prototype plan that has received a favorable opinion letter from the Internal Revenue Service, and nothing has occurred since the date of such determination that would adversely affect such determination (or, in the case of a Plan with no such determination, nothing has occurred that would adversely affect the issuance of a favorable determination letter or otherwise adversely affect such qualification), except as would not reasonably be expected to have a Material Adverse Effect. No ERISA Event has occurred that has had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. There exists no Unfunded Pension Liability with respect to any Plan and no Plan is in, or is expected to be, in at risk status under Title IV of ERISA such that a Material Adverse Effect would be expected in the foreseeable future to occur with respect thereto. There are no actions, suits or claims pending against or involving a Plan (other than routine claims for benefits) or, to the knowledge of the Issuer, any of its Subsidiaries or any ERISA Affiliate, threatened, which would reasonably be expected to be asserted successfully against any Plan and, if so asserted successfully, would reasonably be expected either singly or in the aggregate to have a Material Adverse Effect. The Issuer, each of its Subsidiaries and each ERISA Affiliate have made all contributions to or under each Plan and Multiemployer Plan required by law within the applicable time limits prescribed thereby, by the terms of such Plan or Multiemployer Plan, respectively, or by any contract or agreement requiring contributions to a Plan or Multiemployer Plan, except as would not reasonably be expected to have a Material Adverse Effect. Each Non-U.S. Plan has been maintained in compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities, except as would not reasonably be expected to result in liability to the Issuer or any of its Subsidiaries. All contributions required to be made with respect to a Non-U.S. Plan have been timely made. Neither the Issuer nor any of its Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Non-U.S. Plan. The present value of the accrued benefit liabilities (whether or not vested) under each Non-U.S. Plan, determined as of the end of the Issuer's most recently ended fiscal year on the basis of reasonable actuarial assumptions, did not exceed the current value of the assets of such Non-U.S. Plan allocable to such benefit liabilities.

Section 4.11 Ownership of Property; Insurance.

(a) As of the Closing Date, all interests in real property owned by the Issuer or any of its Subsidiaries (collectively, and together with any additional real estate acquired after the Closing Date, the "Real Estate") or leased by the Issuer or any of its Subsidiaries are listed on Schedule 4.11(a). Each of the Issuer and its Subsidiaries has good title to, or valid leasehold interests in, all Real Estate, leased real property and all other personal property material to the operation of its business (except as sold or otherwise disposed of in the ordinary course of business or in a transaction permitted hereunder), in each case free and clear of Liens (other than Liens not prohibited by Section 7.2). All leases that individually are material to the business or operations of the Issuer and its Subsidiaries are valid and are in full force. As of the Closing Date, all permits required to have been issued or appropriate to enable the Real Estate or any leased real property to be lawfully occupied and used for all of the purposes for which it is currently occupied and used have been lawfully issued and are in full force and effect, except where the failure to be so issued or in full force and effect would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The Intellectual Property Rights owned by the Issuer and its Subsidiaries, together with the Intellectual Property Rights licensed to the Issuer and its Subsidiaries under license agreements, constitute all of the Intellectual Property Rights material to their respective businesses.

(c) Set forth on Schedule 4.11(c) is a complete and accurate summary of the insurance maintained by the Issuer and its Subsidiaries as of the Closing Date. The Issuer and its Subsidiaries have insurance meeting the requirements of Section 5.8, and such insurance policies are in full force and effect.

(d) All assets of the Issuer and its Subsidiaries, whether owned, leased, or managed, are in good repair, working order and condition, ordinary wear and tear excepted, in accordance with the terms and conditions of any applicable lease or license agreement, except where the failure to be in such good repair, working order or condition would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 4.12 Disclosure. Each of the written reports (including, without limitation, all reports that the Issuer is required to file with the Securities and Exchange Commission), financial statements, certificates or other information (other than the Profit Plans, pro formas, budgets, other forward-looking information (which shall be subject solely to the representation set forth in the last sentence of Section 4.4(a)), information regarding third parties and general economic or industry information) (but only to the Issuer's knowledge with respect to any information provided by another Person that is not an Affiliate) furnished by or on behalf of the Issuer to the Collateral Agent or any Purchaser in connection with the negotiation of this Agreement or any other Note Document or delivered hereunder or thereunder (as modified or supplemented by any other information so furnished), is or will be, when furnished and taken as a whole, complete and correct in all material respects and does not or will not, when furnished and taken as a whole, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made (as modified or supplemented by any other information so furnished).

Section 4.13 Labor Relations. There are no strikes, lockouts or other material labor disputes or grievances against the Issuer or any of its Subsidiaries, or, to the Issuer's knowledge, threatened against or affecting the Issuer or any of its Subsidiaries, and no significant unfair labor practice charges or grievances are pending against the Issuer or any of its Subsidiaries, or, to the Issuer's knowledge, threatened against any of them before any Governmental Authority. All payments due from the Issuer or any of its Subsidiaries pursuant to the provisions of any collective bargaining agreement have been paid or accrued as a liability on the books of the Issuer or any such Subsidiary, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

Section 4.14 Subsidiaries. Schedule 4.14 sets forth the name of, the ownership interest of the applicable Note Party in, the jurisdiction of incorporation or organization of, and the organizational type of each Subsidiary of the Issuer and the other Note Parties and identifies each Subsidiary that is a Subsidiary Note Party, in each case as of the Closing Date. As of the Closing Date, the Issuer has no Subsidiaries other than those specifically disclosed on Schedule 4.14 and no Note Party owns any Capital Stock in any Person other than those specifically disclosed on Schedule 4.14. All of the outstanding Capital Stock in each of the Issuer's Subsidiaries that is a corporation has been validly issued, is fully paid and non-assessable, and all such Capital Stock owned by any Note Party is owned by the record owners in the amounts specified on Schedule 4.14 as of the Closing Date, free and clear of all Liens except those created under the Collateral Documents, the Second Lien Collateral Documents and nonconsensual Liens that arise by operation of law. None of the Note Parties or any of their Subsidiaries has, as of the Closing Date, any issued and outstanding Disqualified Capital Stock except as otherwise specifically disclosed on Schedule 4.14.

Section 4.15 Solvency. After giving effect to the execution and delivery of the Note Documents, the issuance and purchase of the Notes under this Agreement and the consummation of all transactions contemplated by such Note Documents, the Issuer and its Subsidiaries on a consolidated basis are Solvent.

Section 4.16 Deposit and Disbursement Accounts. Schedule 4.16 lists all banks and other financial institutions at which any Note Party maintains deposit accounts, lockbox accounts, disbursement accounts, investment accounts or other similar accounts as of the Closing Date, and such Schedule correctly identifies the name, address and telephone number of each financial institution, the name in which the account is held, the type of the account, the complete account number therefor, and whether such account is a Government Receivables Account.

Section 4.17 Collateral Documents.

(a) The Guaranty and Security Agreement and each other Collateral Document is effective to create in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof to the extent such a security interest can be created by authentication of a written security agreement under Articles 8 and 9 of the UCC. In the case of certificated Capital Stock pledged pursuant to the Guaranty and Security Agreement, when certificates representing such Capital Stock are delivered to the Collateral Agent, and in the case of the other Collateral described in the Guaranty and Security Agreement or any other Collateral Document (other than deposit accounts and investment property) in which a Lien may be perfected by the filing of a financing statement, when financing statements are filed in the appropriate filing offices as specified in Article 9 of the UCC (which, as of the Closing Date, for each of the Note Parties is the filing office set forth for each Note Party on Schedule 3 to the Guaranty and Security Agreement), in each case, the Collateral Agent, for the benefit of the Secured Parties, shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Note Parties in such Collateral (including such Capital Stock) and the proceeds thereof, as security for the Obligations, in each case prior and superior in right to any other Person (except for Specified Permitted Liens). In the case of Collateral that consists of deposit accounts (other than a Government Receivables Account) or investment property, when an Account Control Agreement is executed and delivered by all parties thereto with respect to such deposit accounts or investment property, the Collateral Agent, for the benefit of the Secured Parties, shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Note Parties in such Collateral and the proceeds thereof, as security for the Obligations, prior and superior to any other Person (except for Specified Permitted Liens) except as provided under the applicable Account Control Agreement with respect to the financial institution party thereto.

(b) When the filings in clause (a) of this Section are made and when, if applicable, the Copyright Security Agreements are filed in the United States Copyright Office, the Collateral Agent, for the benefit of the Secured Parties, shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Note Parties in the Copyrights subject to such Copyright Security Agreement, if any, in which a security interest may be perfected by filing, recording or registering a security agreement, financing statement or analogous document in the United States Copyright Office, as applicable, in each case prior and superior in right to any other Person (except for Specified Permitted Liens).

(c) Each Mortgage, if any, is effective to create in favor of the Collateral Agent for the ratable benefit of the Secured Parties a legal, valid and enforceable Lien on all of such Note Party's right, title and interest in and to the Real Estate of such Note Party covered thereby and the proceeds thereof, and when such Mortgage is filed in the real estate records where the respective Mortgaged Property is located, such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of such Note Party in such Real Estate and the proceeds thereof, in each case prior and superior in right to any other Person, other than with respect to Permitted Encumbrances and Specified Permitted Liens.

Section 4.18 Material Agreements. As of the Closing Date, all Material Agreements of the Issuer and its Subsidiaries are listed on Schedule 4.18, and each such Material Agreement is in full force and effect. As of the Closing Date, the Issuer has delivered to the Purchasers a true, complete and correct copy of each Material Agreement (including all schedules, exhibits, amendments, supplements, modifications, assignments and all other documents delivered pursuant thereto or in connection therewith).

Section 4.19 Sanctions; Anti-Terrorism and Anti-Corruption Laws.

(a) None of the Issuer nor any of its Affiliates or, to the Issuer's and its Subsidiaries' knowledge, their respective officers, directors, brokers or agents of such Person or Affiliate (i) has violated any Anti-Terrorism Laws or Sanction, (ii) has engaged in any transaction, investment, undertaking or activity that conceals the identity, source or destination of the proceeds from any category of prohibited offenses designated by the Organization for Economic Co-operation and Development's Financial Action Task Force on Money Laundering, (iii) is a Person whose name appears on the list of Specially Designated Nationals and Blocked Persons published by OFAC (an "OFAC Listed Person") or is otherwise a Sanctioned Person, (iv) is an agent, department, or instrumentality of, or is otherwise beneficially owned by, controlled by or acting on behalf of, directly or indirectly, (A) any OFAC Listed Person or (B) any other Sanctioned Person or Sanctioned Country, or (v) is otherwise blocked, the subject or target of Sanctions or engaged in any activity in violation of Sanctions or Anti-Terrorism Laws (each OFAC Listed Person, Sanctioned Person, Sanctioned Country and each other Person, entity, organization and government of a country described in clauses (iii), (iv) or (v), a "Blocked Person"). Neither the Issuer nor any Controlled Affiliate thereof has been notified that its name appears or may in the future appear on a list of Persons that engage in investment or other commercial activities in Iran or any other Sanctioned Country. No part of the proceeds from the Notes issued and purchased hereunder constitutes or will constitute funds obtained on behalf of any Blocked Person or will otherwise be used by the Issuer, directly or indirectly, or lent, contributed or otherwise made available to any Person (x) in connection with any investment in, or any transactions or dealings with, any Blocked Person, (y) to fund any activities or business of or with any Sanctioned Person, or in any Sanctioned Country or (z) otherwise in any manner that would result in a violation of Sanctions by any Person (including any Person participating in the Notes, whether as underwriter, advisor, investor or otherwise).

(b) Neither the Issuer nor any of its Affiliates or, to the Issuer's knowledge, their respective officers, directors, brokers or agents acting or benefiting in any capacity in connection with the Notes (i) deals in or otherwise engages, or has dealt or otherwise engaged, in any transaction related to, any property or interests in property blocked pursuant to any Anti-Terrorism Law or Sanction, (ii) engages in or conspires to, or engaged or conspired 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 or Sanction, (iii) has been found in violation of, charged with, or convicted under any Anti-Terrorism Law, (iv) to the Issuer's knowledge after making due inquiry, is under investigation by any Governmental Authority for possible violation of Anti-Terrorism Laws or any Sanctions, (v) has been assessed civil penalties under any Anti-Terrorism Laws or any Sanctions, or (vi) has had any of its funds seized or forfeited in an action under any Anti-Terrorism Laws. The Issuer has established policies, procedures and controls which are designed (and otherwise comply with applicable law) to ensure that each of the Issuer and each Controlled Affiliate thereof, and each of their respective directors, officers, employees and agents, is and will continue to be in compliance with all applicable current and future Anti-Terrorism Laws and Sanctions.

(c) None of the Issuer nor any of its Affiliates (i) has been charged with, or convicted of bribery or any other anti-corruption related activity under any applicable Anti-Corruption Laws, (ii) to the Issuer's knowledge after making due inquiry, is under investigation by any Governmental Authority for possible violation of Anti-Corruption Laws, or (iii) has been assessed civil or criminal penalties under any Anti-Corruption Laws. The Issuer and its Subsidiaries will not use any part of the proceeds of the Notes, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the Anti-Corruption Laws. The Issuer and, to the Issuer's knowledge, its respective directors, officers and employees and agents are in compliance with all Anti-Corruption Laws, and the Issuer has established policies, procedures and controls which are designed (and otherwise comply with applicable law) to ensure that the Issuer and each Controlled Affiliate thereof, and each of their respective directors, officers, employees and agents, is and will continue to be in compliance with all applicable current and future Anti-Corruption Laws.

Section 4.20 Compliance with Healthcare Laws.

(a) The Issuer and each of its Subsidiaries is in compliance in all respects with all Healthcare Laws, except for such non-compliance which would not reasonably be expected to have a Healthcare Material Adverse Effect. The Issuer and its Subsidiaries participate in and have not been excluded from the Governmental Payor Arrangements listed on Schedule 4.20(a). A list of all of the Issuer's and its Subsidiaries' existing (i) Medicare provider numbers and Medicaid provider numbers, (ii) Medicare supplier numbers and Medicaid supplier numbers, and (iii) all other Governmental Payor provider agreements and numbers, excluding TRICARE and CHAMPUS, CHAMPVA and the Veteran's Administration, pertaining to the business of the Issuer or any of its Subsidiaries as of the Closing Date or, if such contracts do not exist, other documentation evidencing such participation as of the Closing Date are set forth on Schedule 4.20(a). Each of the Issuer's and its Subsidiaries' existing Third Party Payor Arrangements pursuant to which Issuer and its Subsidiaries received $500,000 or more in payment in calendar year 2016 is set forth on Schedule 4.20(a). Each of the Issuer and its Subsidiaries has entered into and maintains all Governmental Payor Arrangements and Third Party Payor Arrangements as are necessary to conduct its respective business as currently conducted. The Governmental Payor Arrangements and Third Party Payor Arrangements to which the Issuer or a Subsidiary is a party constitute valid and binding obligations of the Issuer or such Subsidiary, enforceable against the Issuer or such Subsidiary in accordance with their respective terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity) and, to the knowledge of the Issuer, are in full force and effect, except as would not, either individually or in the aggregate, reasonably be expected to have a Healthcare Material Adverse Effect or as disclosed on Schedule 4.20(a). To the knowledge of the Issuer, neither the Issuer nor any of its Subsidiaries is in default under any Governmental Payor Arrangement or Third Party Payor Arrangement to which it is a party and, to the knowledge of the Issuer, the other parties thereto are not in default thereunder, except as would not have a Healthcare Material Adverse Effect. Each of the Issuer and its Subsidiaries (i) duly holds, and is in good standing with respect to, such Licenses as are necessary to own its respective assets and to conduct its respective business (including without limitation such Licenses as are required under such Healthcare Laws as are applicable thereto, and all Reimbursement Approvals), except where the absence of such a License would not reasonably be expected to have a Healthcare Material Adverse Effect and (ii) where applicable to its business, has obtained and maintains Medicaid and Medicare provider and supplier numbers. Schedule 4.20(a) sets forth all such healthcare Licenses held by each of the Issuer and its Subsidiaries as of the Closing Date. There is no pending or, to the knowledge of the Issuer, threatened material Limitation of any such License, Medicaid provider or supplier number, or Medicare provider or supplier number of the Issuer or any of its Subsidiaries, except for such Limitations as would not reasonably be expected to have a Healthcare Material Adverse Effect.

(b) For purposes of the Stark Law, to the extent that any services provided by the Issuer or its Subsidiaries are designated health services (as defined by the Stark Law), (i) none of such services involve, arise from, or occur in connection with "referrals" as defined by Stark Law or as proscribed thereunder absent the applicability or availability of a statutory or regulatory exception to the referral prohibitions set forth thereunder, and (ii) none of such services are provided by the Issuer or any of its Subsidiaries for the benefit of any of the foregoing, absent the applicability or availability of a statutory or regulatory exception to the referral prohibitions set forth thereunder, in each case in the case of the immediately preceding clauses (i) and (ii), except to the extent that such failures, violations or non-compliance would not reasonably be expected to have a Healthcare Material Adverse Effect.

(c) Except as would not reasonably be expected to have a Material Adverse Effect, each of the Issuer and its Subsidiaries holds all Accreditations necessary or required by applicable Requirements of Law for the operation of its business (including accreditation by an appropriate organization necessary to receive payment and compensation and to participate under Medicare and Medicaid) (individually, a "Company Accreditation," and collectively, the "Company Accreditations"). There is no pending or, to the knowledge of the Issuer, threatened Limitation of any such Company Accreditations, except as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each of the Issuer and its Subsidiaries is in compliance with the terms of the Company Accreditations.

(d) Each employee of the Issuer and each of its Subsidiaries duly holds all Licenses (to the extent required) to provide professional services to patients by each state or state agency or commission, or any other Governmental Authority having jurisdiction over the provision of such services required to enable such employee to provide the professional services necessary to enable each of the Issuer and its Subsidiaries to operate its business as currently operated and in connection with the duties performed by such employee, except as would not reasonably be expected to have a Material Adverse Effect. There is no pending or, to the knowledge of the Issuer, threatened Limitation of any such required Licenses with respect to any employee of the Issuer and each of its Subsidiaries, except where such Limitation would not, either individually or in the aggregate, reasonably be expected to have a Healthcare Material Adverse Effect. Except as would not, either individually or in the aggregate, reasonably be expected to have a Healthcare Material Adverse Effect, each employee of the Issuer and its Subsidiaries is in compliance with the terms of all such Licenses.

(e) All reports, documents, schedules, statements, filings, submissions, forms, registrations, notices, approvals and other documents required to be filed, obtained, maintained or furnished pursuant to any Governmental Payor Arrangement, Third Party Payor Arrangement, License, Company Accreditation, and other applicable Healthcare Laws by the Issuer or any of its Subsidiaries to any Governmental Authority (individually, "Company Regulatory Filings" and collectively, "Company Regulatory Filings") have been so filed, obtained, maintained or furnished, and all such Company Regulatory Filings were complete and correct on the date filed (or were corrected in or supplemented by a subsequent filing), except where such failure would not reasonably be expected to have a Healthcare Material Adverse Effect, and each of the Issuer and its Subsidiaries has timely paid all amounts, Taxes, fees and assessments due and payable in connection therewith, except where the failure to make such payments on a timely basis would not reasonably be expected to have a Healthcare Material Adverse Effect. The Issuer and each of its Subsidiaries has maintained all records required to be maintained under all applicable Requirements of Law with any Governmental Authorities (including all Governmental Payor Arrangements in which it participates, as required by Healthcare Laws), except where the failure to do so would not reasonably be expected to have a Healthcare Material Adverse Effect.

(f) Since December 31, 2016, none of the Issuer nor any of its Subsidiaries, nor, to the knowledge of the Issuer, any employee or contractor of the Issuer or any of its Subsidiaries has been, or to the knowledge of the Issuer has been threatened to be, (i) excluded from any Governmental Payor Arrangement pursuant to 42 U.S.C. § 1320a-7b and related regulations, (ii) "suspended" or "debarred" from selling products to the U.S. government or its agencies pursuant to the Federal Acquisition Regulation, relating to debarment and suspension applicable to federal government agencies generally (42 C.F.R. Subpart 9.4), or other applicable Requirements of Law, (iii) debarred, disqualified, suspended or excluded from participation in Medicare, Medicaid or any other governmental health care program or is listed on the General Services Administration list of excluded parties, nor is any such debarment, disqualification, suspension or exclusion, to the knowledge of a Note Party, threatened or pending, or (iv) made a party to any other action by any Governmental Authority that may prohibit it from selling products or providing services to any Governmental Authority or other purchaser pursuant to any Requirement of Law. Except for the payment of the amounts expressly provided for in the Exjade Settlement, none of the Issuer nor any of its Subsidiaries nor, to the knowledge of the Issuer, any employee or contractor of the Issuer or any of its Subsidiaries is party to a corporate integrity agreement, consent order, consent decree, permanent injunction or other settlement agreement with any Governmental Authority or Third Party Payor or otherwise pursuant to any Governmental Payor Arrangement, Third Party Payor Arrangement, License, or Company Accreditation, including, without limitation, any additional corporate integrity agreement, consent order, consent decree, permanent injunction or other settlement agreement arising out of allegations involving the Issuer and the prescription drug known as Exjade, which individually (or, together with any related Settlements (other than the Exjade Settlement), in the aggregate) (i) would reasonably be expected to have a Healthcare Material Adverse Effect or (ii) requires the payment of money in an amount in excess of $12,500,000.

(g) Schedule 4.20(g) sets forth a list of all notices received since December 31, 2016 of material noncompliance (including FDA 483 letters, FDA correspondence, board of pharmacy inspection reports, and similar notices), requests for material remedial action, investigations, return of overpayment or imposition of fines (whether ultimately paid or otherwise resolved) by any Governmental Authority or Third Party Payor or pursuant to any Governmental Payor Arrangement, Third Party Payor Arrangement, License, or Company Accreditation, but does not include Routine Payor Audits (the "Health Care Audits"). Each of the Issuer and its Subsidiaries 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 Healthcare Material Adverse Effect. Neither the Issuer nor any of its Subsidiaries has any (A) uncured deficiency that could lead to the imposition of a remedy, (B) existing accrued and/or unpaid indebtedness or overpayment to any Governmental Authority or Governmental Payor, including Medicare or Medicaid, or (C) existing accrued and/or unpaid overpayment amounts owing under any finally resolved audit or investigation by any Governmental Payor or Third Party Payor, excepting any of the foregoing that would not reasonably be expected to have a Healthcare Material Adverse Effect.

(h) The execution and delivery of the Note Documents, and each of the Issuer's and its Subsidiaries' performance thereunder (including the performance of the pre- and post- closing notices and applications as provided in the Note Documents) will not (i) result in the loss of or limitation of any License, Company Accreditations or Company Reimbursement Approvals or (ii) reduce receipt of the ongoing payments or reimbursements pursuant to the Company Reimbursement Approvals that the Issuer or any of its Subsidiaries is receiving as of the date hereof.

(i) The Issuer and its Subsidiaries currently maintain a corporate compliance program and quality management program reasonably designed to promote compliance with applicable Healthcare Laws (except for noncompliance that would not reasonably be expected to have a Healthcare Material Adverse Effect).

Section 4.21 HIPAA/HITECH Compliance. To the extent that and for so long as the Issuer or any of its Subsidiaries is a "covered entity" within the meaning of HIPAA and the HITECH Act, each of the Issuer and its Subsidiaries (a) has undertaken or will promptly undertake all necessary compliance efforts required by HIPAA and the HITECH Act; (b) has developed or will develop a detailed plan for becoming HIPAA and HITECH Compliant (a "HIPAA/HITECH Compliance Plan"); and (c) has implemented or will implement those provisions of such HIPAA/HITECH Compliance Plan necessary to ensure that each of the Issuer and its Subsidiaries is or becomes HIPAA and HITECH Compliant, except to the extent in each case that such failures would not reasonably be expected to have a Healthcare Material Adverse Effect. For purposes hereof, "HIPAA and HITECH Compliant" shall mean that each of the Issuer and its Subsidiaries (i) is or will be in compliance (except for non-compliance that would not reasonably be expected to have a Healthcare Material Adverse Effect) with (A) each of the applicable requirements of the so-called "Administrative Simplification" provisions of HIPAA and (B) any or all requirements set forth in the HITECH Act, including, but not limited to, any breach notification requirements, and (ii) is not and would not reasonably be expected to become the subject of any civil or criminal penalty, process, claim, action or proceeding, or any administrative or other regulatory review, survey, process or proceeding (other than routine surveys or reviews conducted by any Government Payor or other accreditation entity) that would reasonably be expected to have a Healthcare Material Adverse Effect.

Section 4.22 Reimbursement.

(a) Except as disclosed in Schedule 4.22(a), with respect to billings by each of the Issuer and its Subsidiaries as of the Closing Date, each of the Issuer and its Subsidiaries is in compliance with all Requirements of Law and the written material reimbursement policies, rules and regulations of Governmental Payors and Third Party Payors, including, without limitation, adjustments under any capitation arrangement, fee schedule, discount formula or cost-based reimbursement except the failure to comply with which would not reasonably be expected to have a Healthcare Material Adverse Effect. Except as would not be expected to have a Healthcare Material Adverse Effect, each of the Issuer and its Subsidiaries holds all Reimbursement Approvals necessary for the operation of its business as currently operated (individually, a "Company Reimbursement Approval," and collectively, the "Company Reimbursement Approvals"). There is no pending or, to the knowledge of the Issuer, threatened Limitation of any such Company Reimbursement Approvals, except as would not reasonably be expected to have a Healthcare Material Adverse Effect or as disclosed on Schedule 4.22(a). Except as would not reasonably be expected to have a Healthcare Material Adverse Effect or as disclosed on Schedule 4.22(a), each of the Issuer and its Subsidiaries is in compliance with the terms of the Company Reimbursement Approvals.

(b) Except as would not reasonably be expected to have a Healthcare Material Adverse Effect, the accounts receivable of each of the Issuer and its Subsidiaries have been properly adjusted in all material respects to reflect the reimbursement policies under all applicable Requirements of Law and other Governmental Payor Arrangements or Third Party Payor Arrangements, to which the Issuer or any of its Subsidiaries is subject, and such accounts receivable do not exceed amounts the Issuer or such Subsidiary is entitled to receive under any capitation agreement, fee schedule, discount formula, cost-based reimbursement or other adjustment or limitation to usual charges. There has been no intentional overbilling or overcollection pursuant to any Governmental Payor Arrangements or Third Party Payor Arrangement other than as created by routine adjustments and disallowances made in the ordinary course of business by the Governmental Payors and Third Party Payors with respect to such billings.

Section 4.23 Fraud and Abuse. Except as would not, individually or in the aggregate, reasonably be expected to have a Healthcare Material Adverse Effect, neither the Issuer nor any of its Subsidiaries has engaged in any activities that (a) are prohibited under 42 U.S.C. §§ 1320a-7b, or the regulations promulgated thereunder, or related Requirements of Law, or (b) are prohibited by rules of professional conduct, or (c) are prohibited under any statute or the regulations promulgated pursuant to such statutes, including, without limitation, the following: (i) knowingly and willfully making or causing to be made a false statement or misrepresentation of a material fact in any application for any benefit or payment; (ii) knowingly and willfully making or causing to be made any false statement or misrepresentation of a material fact for use in determining rights to any benefit or payment; (iii) failure to disclose knowledge by a claimant of the occurrence of any event affecting the initial or continued right to any benefit or payment on its own behalf or on behalf of another with intent to secure such benefit or payment fraudulently; and (iv) knowingly and willfully soliciting or receiving any illegal remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind or offering to pay or receive such remuneration (x) in return for referring an individual to a Person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by any Governmental Payor, or (y) in return for purchasing, leasing, or ordering or arranging for or recommending purchasing, leasing or ordering any good facility, service, or item for which payment may be made in whole or in part by any Governmental Payor. Between January 1, 2017 and the Closing Date, neither the Issuer nor any of its Subsidiaries has received a subpoena issued by any Governmental Authority with respect to a possible violation of Healthcare Laws by the Issuer or any of its Subsidiaries (but excluding Routine Payor Audits).

Section 4.24 EEA Financial Institutions; Other Regulations. No Note Party is an EEA Financial Institution.

Section 4.25 **Offer of Notes; Private Offering.** Subject to the accuracy of each Purchaser's several (and not joint) representations and warranties set forth in Section 2.25:

(a) during the six-month period ending on the commencement of the offer of the Notes and concurrently with the offering of the Notes, no Note Party, its respective Rule 501 Affiliates or any person acting on its or any of their behalf, directly or indirectly, offered the Notes or any part thereof or any similar securities for issue or sale to, or solicited any offer to buy any of the same from, any person other than the Purchasers and less than 15 other Persons;

(b) no form of general solicitation or general advertising was used by any Note Party or any of their representatives in connection with the offer or sale of the Notes to the Purchasers; and

(c) no registration of the Notes pursuant to the provisions of the Securities Act or the state securities "blue sky" laws will be required for the offer, sale or issuance of the Notes by the Issuer to the Purchasers pursuant to this Agreement and it has not taken and will not take any actions which would bring the issuance and sale of the Notes within the provisions of Section 5 of the Securities Act or the registration or qualification provisions of any such Laws; and

(d) the Notes are being offered and sold only to "accredited investors" (as defined in Rule 501 under the Securities Act).

Section 4.26 **Designation as Credit Facilities.** As contemplated by the definition of "Credit Facilities" contained in the Senior Notes Indenture, the Notes, this Agreement, the Second Lien Notes and the Second Lien Note Purchase Agreement each qualify, and each hereby is designated as, a "Credit Facility" for purposes of the Senior Notes Indenture and shall be included in the definition of "Credit Facilities" as so set forth in the Senior Notes Indenture.

ARTICLE V

AFFIRMATIVE COVENANTS

The Issuer covenants and agrees that so long as any Purchaser has a Commitment hereunder or any Obligation remains unpaid or outstanding (other than Hedging Obligations owed by any Note Party to any Purchaser-Related Hedge Provider, Bank Product Obligations and indemnities and other contingent obligations not then due and payable and as to which no claim has been made):

Section 5.1 **Financial Statements and Other Information.** The Issuer will deliver to each Purchaser:

(a) as soon as available and in any event within 90 days after the end of each Fiscal Year of the Issuer, a copy of the annual audited report for such Fiscal Year for the Issuer and its Subsidiaries, containing a consolidated balance sheet of the Issuer and its Subsidiaries as of the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows (together with all footnotes thereto) of the Issuer and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, and reported on by independent public accountants of nationally recognized standing (without a "going concern" or like qualification, exception or explanation and without any qualification or exception as to the scope of such audit (except any such qualification arising as a result of the impending Maturity Date (as a result of clause (i) of such definition) or "Maturity Date" (as defined in the Second Lien Note Purchase Agreement) (as a result of clause (i) of such definition)) to the effect that such financial statements present fairly in all material respects the financial condition and the results of operations of the Issuer and its Subsidiaries for such Fiscal Year on a consolidated basis in accordance with GAAP (as in effect at the time such financial statements were prepared and subject to Section 1.3) consistently applied (except as expressly noted therein) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards;

(b) as soon as available and in any event within 45 days after the end of each Fiscal Quarter of the Issuer (other than the last Fiscal Quarter in each Fiscal Year), an unaudited consolidated balance sheet of the Issuer and its Subsidiaries as of the end of such Fiscal Quarter and the related unaudited consolidated statements of income and cash flows of the Issuer and its Subsidiaries for such Fiscal Quarter and the then elapsed portion of such Fiscal Year, setting forth in each case in comparative form the figures for the corresponding Fiscal Quarter and the corresponding portion of the Issuer's previous Fiscal Year and the corresponding figures for the Profit Plan for the current Fiscal Year;

(c) concurrently with the delivery of the financial statements referred to in clauses (a) and (b) of this Section, a Compliance Certificate signed by an appropriate Responsible Officer of the Issuer (i) certifying as to whether there exists a Default or Event of Default on the date of such certificate and, if a Default or an Event of Default then exists, specifying the details thereof and the action, if any, which the Issuer has taken or proposes to take with respect thereto, (ii) if applicable, setting forth in reasonable detail calculations demonstrating compliance with the financial covenant set forth in Article VI, (iii) specifying any change in the identity of the Subsidiaries as of the end of such Fiscal Year or Fiscal Quarter from the Subsidiaries identified to the Purchasers on the Closing Date or as of the most recent Fiscal Year or Fiscal Quarter, as the case may be, and (iv) stating whether any change in GAAP or the application thereof has occurred since the date of the most recently delivered audited financial statements of the Issuer and its Subsidiaries, and, if any change has occurred, specifying the effect of such change on the financial statements accompanying such Compliance Certificate;

(d) concurrently with the delivery of the financial statements referred to in clause (a) above, a certificate of the accounting firm that reported on such financial statements (which may be included in the opinion or other reports delivered by such accounting firm pursuant to clause (a)) stating that, in making the examination necessary to prepare such financial statements, no knowledge was actually obtained of the occurrence and continuance of any Default or Event of Default, except as specified in such certificate (it being understood that no special or separate inquiry or review will have been made or shall be required to be made with respect to the existence of any Default or Event of Default and that such certificate shall be limited to the items that independent certified public accountants are permitted to cover in such certificates pursuant to their professional standards and customs of the profession);

(e) as soon as available and in any event within 90 days after the commencement of any Fiscal Year, a Profit Plan for such Fiscal Year;

(f) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all functions of said Commission, or with any national securities exchange, or distributed by the Issuer to its shareholders generally, as the case may be;

(g) promptly following any request therefor, such other reports or information including with respect to the results of operations, business affairs and financial condition of the Issuer or any of its Subsidiaries as the Collateral Agent or any Purchaser may reasonably request; and

(h) until Consolidated EBITDA for the period of four Fiscal Quarters ending on the last day of the most recent Fiscal Quarter for which financial statements have been (or were required to be) delivered hereunder exceeds $45,000,000, deliver to each private-side Purchaser as soon as available and in any event within 30 days after the end of each fiscal month of the Issuer, an unaudited consolidated balance sheet of the Issuer and its Subsidiaries as of the end of such fiscal month and the related unaudited consolidated statements of income and cash flows of the Issuer and its Subsidiaries for such fiscal month and the then elapsed portion of such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the Profit Plan for the current Fiscal Year; provided the Purchasers acknowledge and agree that (x) the financial statements described in this clause (h) are confidential and constitute material non-public information of the Issuer and (y) no Purchaser (including any private-side Purchaser) shall distribute or furnish a copy of all or any portion of the financial statements described in this clause (h) to any Purchaser that is not a private-side Purchaser other as expressly permitted under Section 10.11(iv).

So long as the Issuer is required to file periodic reports under Section 13(a) or Section 15(d) of the Exchange Act, the Issuer may satisfy its obligation to deliver the financial statements referred to in clauses (a) and (b) above by delivering the Issuer's Form 10-K or 10-Q filed with the Securities and Exchange Commission within the applicable time periods set forth in clauses (a) and (b), as applicable.

Section 5.2 Notices of Material Events. The Issuer will furnish to the Collateral Agent and each Purchaser prompt written notice of the following:

(a) the occurrence of any Default or Event of Default;

(b) the filing or commencement of, or any material development in, any action, suit or proceeding by or before any arbitrator or Governmental Authority against the Issuer or any of its Subsidiaries which would reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any event or any other development by which the Issuer or any of its Subsidiaries (i) fails to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) becomes subject to any Environmental Liability, (iii) receives written notice of any claim with respect to any Environmental Liability, or (iv) becomes aware of any basis for any Environmental Liability, in each case which, either individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect;

(d) promptly and in any event within 15 days after (i) the Issuer or any of its Subsidiaries knows or has reason to know that any ERISA Event that (individually or together with all other ERISA Events) would reasonably be expected to have a Material Adverse Effect has occurred, a certificate of the chief financial officer of the Issuer describing such ERISA Event and the action, if any, proposed to be taken with respect to such ERISA Event and a copy of any notice filed with the PBGC or the IRS pertaining to such ERISA Event and any notices received by the Issuer or such Subsidiary (or, if applicable, an ERISA Affiliate) from the PBGC or any other governmental agency with respect thereto and (ii) becoming aware that there has been a material increase in Unfunded Pension Liabilities (not taking into account Plans with negative Unfunded Pension Liabilities) or a Plan is, or is expected to be, in at risk status under Title IV of ERISA since the date the representations hereunder are given or deemed given, or from any prior notice, as applicable such that the resulting Unfunded Pension Liabilities, if incurred, or the at risk status, as applicable, would reasonably be expected to have a Material Adverse Effect, a detailed written description thereof from the chief financial officer of the Issuer;

(e) the receipt by the Issuer or any of its Subsidiaries of any written notice of an alleged default or event of default, with respect to the Second Lien Note Purchase Agreement or any Material Indebtedness of the Issuer or any of its Subsidiaries;

(f) upon receipt thereof, copies of all final audit reports and all final management letters relating to the Issuer or any of its Subsidiaries submitted by the Issuer's primary accountants or primary auditors in connection with each annual, interim or special audit of the books of the Issuer or any of its Subsidiaries (provided that, in the event that the Issuer engages such accountants or auditors to perform a specific review, test, valuation or other analysis of all or any portion of the Issuer's financial condition or financial performance, the results of such engagement shall not be required to be delivered to the Collateral Agent or the Purchasers to the extent that such results are not otherwise required to be delivered pursuant to another provision of this Agreement);

(g) written notice of the receipt by the Issuer or any of its Subsidiaries from any Governmental Authority or other Person of (1) any notice asserting any failure by the Issuer or any of its Subsidiaries to be in compliance with applicable Requirements of Law or that threatens the taking of any action against the Issuer or any of its Subsidiaries or sets forth circumstances in any such event where the failure or the taking of action would reasonably be expected to have a Material Adverse Effect, (2) any notice of any actual or threatened in writing Limitation with respect to any Governmental Payor Arrangement, Third Party Payor Arrangement, License, or Company Accreditation of the Issuer or any of its Subsidiaries, where such action would, either individually or in the aggregate with other similar actions, reasonably be expected to have a Material Adverse Effect, or (3) any subpoena, search warrant, civil investigative demand, criminal action or threat of criminal action, FDA warning letter, FDA 483 letter or other request or investigation by a Governmental Authority with respect to a possible violation of Healthcare Laws by the Issuer or any of its Subsidiaries (but excluding (A) state licensure and Medicare certification and participation surveys by a Governmental Authority with respect to a possible violation of Healthcare Laws, unless any deficiencies are of a kind that do result or likely will result in the issuance of a notice of suspension or termination of any License, payment, or provider or supplier number or agreement, and (B) Routine Payor Audits);

(h) if any Default or Event of Default is in existence, if requested by any Purchaser, furnish to each Purchaser, to the maximum extent permitted by applicable Requirements of Law, (i) copies of all Company Regulatory Filings, (ii) copies of all Licenses, Company Accreditations and Company Reimbursement Approvals, as the same may be renewed or amended; (iii) copies of all 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 Requirements of Law), all subject to any limitations on disclosure included in any Requirement of Law;

(i) any default or material amendment under, or termination of, (i) that certain Facility Participation Agreement effective as of June 1, 2009, with United HealthCare Insurance Company, contracting on behalf of its Oxford Health Plans (NJ), (ii) that certain Facility Participation Agreement effective as of June 1, 2009, with United HealthCare Insurance Company, contracting on behalf of itself and UnitedHealthcare of the Midwest, (iii) that certain Ancillary Provider Participation Agreement effective as of June 1, 2009, with United HealthCare Insurance Company, contracting on behalf of itself and UnitedHealthcare of New York, or (iv) that certain Ancillary Provider Participation Agreement effective as of June 1, 2009, with UnitedHealthcare of New York, Inc.; and

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

The Issuer will furnish to the Collateral Agent and each Purchaser the following:

(x) promptly and in any event at least 30 days prior thereto, notice of any change (i) in any Note Party's legal name, (ii) in any Note Party's chief executive office, its principal place of business or any office in which it maintains books or records, (iii) in any Note Party's identity or legal structure, (iv) in any Note Party's federal taxpayer identification number or organizational number or (v) in any Note Party's jurisdiction of organization; and

(y) promptly upon request therefor, such other information and reports relating to the past, present or anticipated future financial condition, operations, plans, budgets and projections of the Issuer and each of its Subsidiaries, as the Collateral Agent or any Purchaser at any time or from time to time may reasonably request.

Each notice or other document delivered under this Section shall be accompanied by a written statement of a Responsible Officer setting forth the details of the event or development requiring such notice or other document and any action taken or proposed to be taken with respect thereto.

Section 5.3 Existence; Conduct of Business. The Issuer will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and maintain in full force and effect its legal existence and its respective material rights, licenses, permits, privileges, franchises, Patents, Copyrights, Trademarks, trade names and all other Intellectual Property Rights that are material for the conduct of its business, except where failure to do so would not reasonably be expected to result in a Material Adverse Effect; provided that nothing in this Section shall prohibit any transaction that is expressly permitted hereunder.

Section 5.4 Compliance with Laws. The Issuer will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and requirements of any Governmental Authority applicable to its business and properties, including, without limitation, all Environmental Laws, ERISA and OSHA, except where the failure to do so, either individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. The Issuer will, and will cause each of its Subsidiaries to, maintain in effect policies, procedures and controls designed to ensure compliance by the Issuer and its Subsidiaries, the Controlled Affiliates thereof and, to the Issuer's knowledge, their respective directors, officers, employees and agents with Sanctions, Anti-Corruption Laws, and Anti-Terrorism Laws.

Section 5.5 Payment of Obligations. The Issuer will, and will cause each of its Subsidiaries to, pay and discharge at or before maturity all of its material obligations and liabilities (including, without limitation, all taxes, assessments and other governmental charges, levies and all other claims that could result in a statutory Lien) before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Issuer or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest would not reasonably be expected to result in a Material Adverse Effect.

Section 5.6 Books and Records. The Issuer will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities to the extent necessary to prepare the consolidated financial statements of the Issuer in conformity with GAAP (subject to the terms of this Agreement with respect to such financial statements).

Section 5.7 Visitation and Inspection. The Issuer will, and will cause each of its Subsidiaries to, permit any representative of the Collateral Agent or any Purchaser to visit and inspect its properties, to examine its books and records and to make copies and take extracts therefrom, and to discuss its affairs, finances and accounts with any of its officers and with its independent certified public accountants (provided that the Issuer is provided reasonable prior notice of any discussion with its auditors or accountants and is afforded an opportunity to participate in such discussions), all at such reasonable times and subject to reasonable prior notice to the Issuer or such Subsidiary; provided that, so long as no Event of Default has occurred and is continuing, visits and inspections under this Section 5.7 shall be limited to one time per Fiscal Year for the Collateral Agent and all Purchasers. Any Related Party of the Collateral Agent or any Purchaser that attends or participates in any such visit or inspection shall, prior to such attendance or participation, expressly agree to be subject to and bound by the confidentiality provisions of this Agreement or shall otherwise be bound by professional ethics rules to maintain such confidentiality.

Section 5.8 Maintenance of Properties; Insurance; Credit Ratings. The Issuer will, and will cause each of its Subsidiaries to, (a) keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear, casualty and condemnation excepted, (b) maintain with financially sound and reputable insurance companies which are not Affiliates of the Issuer (i) insurance with respect to its properties and business, and the properties and business of its Subsidiaries, against loss or damage of the kinds customarily insured against by companies in the same or similar businesses operating in the same or similar locations (including, in any event, flood insurance as described in the definition of Real Estate Documents) and (ii) all insurance required to be maintained pursuant to the Collateral Documents, and will, upon request of any Purchaser, furnish to each Purchaser at reasonable intervals a certificate of a Responsible Officer setting forth the nature and extent of all insurance maintained by the Issuer and its Subsidiaries in accordance with this Section, (c) at all times shall cause the applicable insurance provider to name the Collateral Agent as an additional insured on all liability policies of the Issuer and its Subsidiaries and as a loss payee (pursuant to a loss payee endorsement reasonably satisfactory to the Collateral Agent) on all casualty and property insurance policies of the Issuer and its Subsidiaries, in each case, other than any director and officer indemnification policies, workers' compensation policies and any policies that provide coverage for property that does not constitute Collateral, and (d) use commercially reasonable efforts at all times following the date that is 60 days after the Closing Date (or such longer period as the Required Purchasers may reasonably agree) to maintain ratings for the Notes issued hereunder and the corporate family credit of the Issuer and its Subsidiaries by both S&P and Moody's.

Section 5.9 Use of Proceeds; Margin Regulations.

(a) The Issuer will use the proceeds of all Notes on the Closing Date (together with the proceeds of the Second Lien Notes) (i) to refinance existing Indebtedness of the Note Parties under the Existing Credit Agreement and the Existing Priming Credit Agreement, (ii) to pay fees and expenses incurred in connection with the execution and delivery of this Agreement and the other Note Documents, the issuance and purchase of the Notes and the transactions contemplated to occur in connection therewith and (iii) for working capital and general corporate purposes of the Issuer and its Subsidiaries.

No part of the proceeds of any Note will be used, whether directly or indirectly, for any purpose that would violate any rule or regulation of the Board of Governors of the Federal Reserve System, including Regulation T, Regulation U or Regulation X.

Section 5.10 **Casualty and Condemnation.** The Issuer (a) will furnish to the Collateral Agent and the Purchasers prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding by any Governmental Authority for the taking of any material portion of the Collateral or any material interest therein under power of eminent domain or by condemnation or similar proceeding and (b) will ensure that the Net Cash Proceeds of any such Prepayment Event (whether in the form of insurance proceeds, condemnation awards or otherwise) are collected and applied in accordance with the applicable provisions of this Agreement and the Collateral Documents.

Section 5.11 **Cash Management.** The Issuer shall, and shall cause each Subsidiary Note Party to, maintain the cash management systems described below:

(a) Maintain all cash management and treasury business with a Permitted Third Party Bank, including, without limitation, all deposit accounts, disbursement accounts, investment accounts and lockbox accounts, other than Excluded Accounts (each such deposit account, disbursement account, investment account and lockbox account, other than any Excluded Account, a "Controlled Account").

(b) Each Controlled Account shall (i) be a cash collateral account, with all cash, checks and other similar items of payment in such account securing payment of the Obligations, and in which the Issuer and each of its Subsidiaries shall have granted a first priority Lien (subject to non-consensual Liens arising by operation of law) to the Collateral Agent, on behalf of the Secured Parties, and (ii) be subject to an Account Control Agreement.

(c) Subject to Section 5.11(e), deposit promptly, and in any event no later than five (5) Business Days after the date of receipt thereof, all cash, checks, drafts or other similar items of payment relating to or constituting payments made in respect of any and all accounts and other Collateral into Controlled Accounts, in each case except for cash, checks, drafts, other similar payment items and Cash Equivalents the aggregate value of which does not exceed $3,000,000 at any time.

(d) At any time after the occurrence and during the continuance of an Event of Default and at all times subject to the First Lien/Second Lien Intercreditor Agreement, at the request of the Required Purchasers, the Issuer will, and will cause each other Note Party to, cause all payments constituting proceeds of accounts or other Collateral to be directed into lockbox accounts under agreements in form and substance reasonably satisfactory to the Collateral Agent and the Required Purchasers.

(e) For each deposit account into which the Issuer or any Subsidiary Note Party receives payments from Federal/State Health Care Program Account Debtors (a "Government Receivables Account"), the Issuer or such Subsidiary Note Party shall enter into an agreement (a "Government Receivables Account Agreement") with the Permitted Third Party Bank at which such Government Receivables Account is located, in such form as may be reasonably approved by the Collateral Agent and the Required Purchasers, which agreement shall provide that all funds deposited into such Government Receivables Account shall be transferred promptly (but in any event within one (1) Business Day of deposit) to a Controlled Account of the Issuer or such Subsidiary Note Party. Neither the Issuer nor any Subsidiary Note Party shall terminate or modify a Government Receivables Account Agreement without the approval of the Required Purchasers, which approval (or non-approval, as the case may be) shall be communicated to the Issuer by the Purchasers within five (5) Business Days of any such request for approval and which approval shall not be unreasonably withheld, conditioned or delayed.

Section 5.12 Additional Subsidiaries and Collateral.

(a) In the event that, subsequent to the Closing Date, any Person (but specifically excluding any Specified Strategic Joint Venture) becomes a Domestic Subsidiary, whether pursuant to formation, acquisition or otherwise, (x) the Issuer shall promptly notify the Collateral Agent and the Purchasers thereof and (y) within 30 days (or such longer period as the Required Purchasers shall agree in writing) after such Person becomes a Domestic Subsidiary, the Issuer shall cause such Domestic Subsidiary (i) to become a new Guarantor and to grant Liens in favor of the Collateral Agent in all of its personal property that is not Excluded Property by executing and delivering to the Collateral Agent a supplement to the Guaranty and Security Agreement in form and substance reasonably satisfactory to the Collateral Agent and the Required Purchasers, executing and delivering a Copyright Security Agreement, Patent Security Agreement and Trademark Security Agreement, as applicable, and authorizing, delivering and filing such UCC financing statements or similar instruments necessary to perfect and maintain the Liens in favor of the Collateral Agent and granted under any of the Note Documents, (ii) in accordance with Section 5.13, to grant Liens in favor of the Collateral Agent in all fee ownership interests in Real Estate having a fair market value in excess of $2,500,000 as of the date such Person becomes a Domestic Subsidiary by executing and delivering to the Collateral Agent such Real Estate Documents necessary to perfect and maintain the Collateral Agent's security interest, and (iii) to deliver all such other customary and reasonable documentation (including, without limitation, certified organizational documents, resolutions, lien searches, title insurance policies, surveys, environmental reports and legal opinions) and to take all such other actions as such Subsidiary would have been required to deliver and take pursuant to Section 3.1 if such Subsidiary had been a Note Party on the Closing Date or that such Subsidiary would be required to deliver pursuant to Section 5.13 with respect to any Real Estate. In addition, within 30 days (or such longer period as the Required Purchasers shall permit in writing in their sole discretion) after the date any Person becomes a Domestic Subsidiary, the Issuer shall, or shall cause the applicable Note Party to (i) pledge all of the Capital Stock of such Domestic Subsidiary to the Collateral Agent as security for the Obligations by executing and delivering a supplement to the Guaranty and Security Agreement in form and substance reasonably satisfactory to the Collateral Agent and the Required Purchasers, and (ii) deliver the original certificates evidencing such pledged Capital Stock (to the extent that such Capital Stock is certificated) to the Collateral Agent, together with appropriate powers executed in blank, in each case, other than any such Capital Stock that constitutes Excluded Property.

(b) In the event that, subsequent to the Closing Date, any Person becomes a Foreign Subsidiary, whether pursuant to formation, acquisition or otherwise, (i) the Issuer shall promptly notify the Collateral Agent and the Purchasers thereof and (ii) to the extent such Foreign Subsidiary is owned directly by any Note Party, within 60 days after such Person becomes a Foreign Subsidiary (or such longer period as the Required Purchasers shall agree in writing), the Issuer shall, or shall cause the applicable Note Party to, (A) pledge not more than 65% of the issued and outstanding voting Capital Stock of such Foreign Subsidiary to the Collateral Agent as security for the Obligations pursuant to a pledge agreement in form and substance reasonably satisfactory to the Collateral Agent and the Required Purchasers, (B) deliver the original certificates evidencing such pledged Capital Stock (to the extent that such Capital Stock or portion thereof is certificated) to the Collateral Agent, together with appropriate powers executed in blank and (C) deliver all such other customary and reasonable documentation (including, without limitation, certified organizational documents, resolutions, lien searches and legal opinions) and to take all such other actions as the Collateral Agent or the Required Purchasers may reasonably request.

(c) The Issuer agrees that, following the delivery of any Collateral Documents required to be executed and delivered by this Section, the Collateral Agent shall have a valid and enforceable, first priority perfected Lien (subject to Specified Permitted Liens) on the property required to be pledged pursuant to clauses (a) and (b) of this Section (to the extent that such Lien can be perfected by execution, delivery and/or recording of the Collateral Documents or by filing UCC financing statements, or by taking actual possession of such Collateral), free and clear of all Liens other than Liens expressly permitted by Section 7.2. All actions to be taken pursuant to this Section shall be at the expense of the Issuer or the applicable Note Party, and shall be taken to the reasonable satisfaction of the Collateral Agent and the Required Purchasers.

Section 5.13 Additional Real Estate; Leased Locations.

(a) If any Note Party proposes to acquire after the Closing Date a fee ownership interest in Real Estate having a fair market value in excess of $2,500,000 as of the date of the acquisition thereof, it shall within ninety (90) days following such acquisition provide to the Collateral Agent and each Purchaser the Real Estate Documents with respect to such Real Estate. If, at any time, the fair market value of all Real Estate with respect to which the Note Parties hold a fee ownership interest and have not delivered Real Estate Documents is in excess of $5,000,000, the Note Parties shall within 90 days provide to the Collateral Agent and each Purchaser Real Estate Documents with respect to a sufficient portion of such Real Estate such that, after giving effect to the delivery of such Real Estate Documents, the fair market value of all Real Estate with respect to which the Note Parties hold a fee ownership interest and have not delivered Real Estate Documents does not exceed $5,000,000.

(b) If any Note Party proposes to lease any real property that will serve as such Note Party's chief executive office or the location at which such Note Party's books or records will be stored or located, it shall provide to the Collateral Agent and each Purchaser a copy of such lease and, within sixty (60) days following the effectiveness of such lease, a Collateral Access Agreement from the landlord of such leased property or the bailee with respect to any warehouse or other location where such books, records or Collateral will be stored or located; provided that if such Note Party is unable to deliver any such Collateral Access Agreement after using its commercially reasonable efforts to do so, the Required Purchasers shall waive the foregoing requirement in their reasonable discretion.

Section 5.14 Further Assurances. The Issuer will, and will cause each other Note Party to, execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, Mortgages and other documents), which may be required under any applicable law, or which the Collateral Agent or the Required Purchasers may reasonably request, to effectuate the transactions contemplated by the Note Documents or to grant, preserve, protect or perfect the Liens created by the Collateral Documents or the validity or priority of any such Lien, all at the expense of the Note Parties. The Issuer also agrees to provide to the Collateral Agent or any Purchaser, from time to time upon request, evidence reasonably satisfactory to the Collateral Agent or such Purchaser as to the perfection and priority of the Liens created or intended to be created by the Collateral Documents.

Section 5.15 Healthcare Matters.

(a) Without limiting the generality of any other covenant contained in this Agreement, and except as would not reasonably be expected to have a Material Adverse Effect, the Issuer will, and will cause each of its Subsidiaries to (i) conduct its operations in compliance with all applicable Healthcare Laws, (ii) maintain and comply with all Governmental Payor Arrangements, Third Party Payor Arrangements, Licenses, Company Accreditations and Company Reimbursement Approvals, (iii) timely file, or cause to be filed, all Company Regulatory Filings in accordance with all Requirements of Law, (iv) timely pay all amounts, Taxes, fees and assessments, if any, due and payable in connection with Company Regulatory Filings, (v) timely submit and implement all corrective action plans required to be prepared and submitted in response to any Health Care Audits, (vi) timely refund all overpayments (other than those appealed through the ordinary administrative processes of any applicable Governmental Authority) determined to exist by any Governmental Authority under any Healthcare Law or pursuant to any Governmental Payor Arrangement, (vii) timely repay any overpayment amounts owing under any finally resolved audit or investigation by any Third Party Payor, and (viii) process credit balances received from Third Party Payors in a manner consistent with the Issuer's internal policies and applicable Requirements of Law. The Issuer will, and will cause each of its Subsidiaries to, notify the Collateral Agent and each Purchaser promptly after the Issuer or any of its Subsidiaries becomes aware of any violation of Healthcare Laws by the Issuer or any of its Subsidiaries that would reasonably be expected to have a Material Adverse Effect.

(b) Without limiting the foregoing, the Issuer will, and will cause each of its Subsidiaries to, promptly furnish or cause to be furnished to the Collateral Agent and each Purchaser (x) copies of all reports of investigational/inspectional observations or reports issued to and received by the Issuer or any of its Subsidiaries and issued by any Governmental Authority, (y) copies of all correspondence as well as other documents received by the Issuer or any of its Subsidiaries from any Governmental Authority relating to or arising out of the conduct applicable to the business of Issuer or any of its Subsidiaries that asserts past or ongoing material non-compliance with applicable Healthcare Laws and (z) notice of any investigation or audit or similar proceeding by any Governmental Authority, except in each case where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

Notwithstanding anything to the contrary in any Note Document, neither the Issuer nor any of its Subsidiaries shall be required to furnish to the Collateral Agent or any Purchaser any protected health information or any patient-related information, to the extent such disclosure to the Collateral Agent or such Purchaser is prohibited by any Requirements of Law.

Section 5.16 Post-Closing Covenants. The Issuer will, and will cause each of its Subsidiaries to, as applicable, not later than the dates specified therefor on Schedule 5.16 (or such later dates as the Required Purchasers may agree in writing in their sole discretion), satisfy each of the requirements set forth on Schedule 5.16.

Section 5.17 Second Lien Credit Enhancements. If the Second Lien Collateral Agent or any "Secured Party" under the Second Lien Note Documents, in its capacity as such, receives any additional guaranty or additional collateral agreement after the Closing Date, without limitation of any Event of Default that may arise as a result thereof, the Issuer shall, substantially concurrently with such receipt, use commercially reasonable efforts to cause the same to be granted to the Collateral Agent, for its own benefit and the benefit of the Secured Parties (subject to and without limitation of the terms of the First Lien/Second Lien Intercreditor Agreement).

Section 5.18 Second Lien Note Documents. Notwithstanding anything in this Agreement to the contrary, if any amendment or modification to the Second Lien Note Documents amends or modifies any representation and warranty, covenant (including any financial covenant), event of default or other term contained in the Second Lien Note Documents (or any related definitions), in each case, in a manner that is more restrictive upon the Note Parties or if any amendment or modification to the Second Lien Note Purchase Agreement or other Second Lien Note Document adds an additional representation and warranty, covenant or event of default therein, the Issuer and the other Note Parties acknowledge and agree that this Agreement or the other Note Documents, as the case may be, shall be automatically amended or modified to effect similar amendments or modifications with respect to this Agreement or such other Note Documents, without the need for any further action or consent by the Issuer, the Note Parties, or any other party. In furtherance of the foregoing, the Issuer and the other Note Parties permit the Collateral Agent and the Purchasers to document each such similar amendment or modification to this Agreement or such other Note Documents or insert a corresponding new representation and warranty, covenant, event of default or other provision in this Agreement or such other Note Documents without any need for any further action or consent by the Issuer, the other Note Parties or any other party.

Section 5.19 **Corporate Compliance and Quality Management Program.** The Issuer will, and will cause each of its Subsidiaries to, maintain a corporate compliance and quality management program that is reasonably designed to ensure compliance with applicable Healthcare Laws, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. For the avoidance of doubt, the corporate compliance and quality management program will include policies and procedures relating to internal claims auditing and auditing for compliance to Governmental Authority requirements for the operation of a compounding pharmacy.

ARTICLE VI

FINANCIAL COVENANT

The Issuer covenants and agrees that so long as any Purchaser has a Commitment hereunder or any Obligation remains unpaid or outstanding (other than Hedging Obligations owed by any Note Party to any Purchaser-Related Hedge Provider, Bank Product Obligations and indemnities and other contingent obligations not then due and payable and as to which no claim has been made):

(a) The Issuer shall not permit the Consolidated Covenant Testing Net Leverage Ratio as of the last day of the most recently ended Fiscal Quarter for which financial statements have been delivered (or were required to be delivered) pursuant to Section 5.1(a) or 5.1(b), as applicable, for the period of four (4) consecutive Fiscal Quarters ending on such date, to be greater than the ratio set forth below opposite such Fiscal Quarter:

Fiscal Quarter Ending	Consolidated Covenant Testing Net Leverage Ratio
September 30, 2017	9.00:1.00
December 31, 2017 and each Fiscal Quarter thereafter	8.00:1.00

ARTICLE VII

NEGATIVE COVENANTS

The Issuer covenants and agrees that so long as any Purchaser has a Commitment hereunder or any Obligation remains outstanding (other than Hedging Obligations owed by any Note Party to any Purchaser-Related Hedge Provider, Bank Product Obligations and indemnities and other contingent obligations not then due and payable and as to which no claim has been made):

Section 7.1 **Indebtedness and Disqualified Capital Stock.**

(a) The Issuer will not, and will not permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Indebtedness, except:

(i) Indebtedness created pursuant to the Note Documents;

(ii) Indebtedness of the Issuer and its Subsidiaries existing on the Closing Date and set forth on Schedule 7.1 and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof immediately prior to giving effect to such extension, renewal or replacement (except in respect of costs and expenses in connection therewith or any interest that is paid-in-kind and capitalized to the principal amount thereof in connection with such extension, renewal or replacement) or shorten the maturity or the Weighted Average Life to Maturity thereof;

(iii) Indebtedness of the Issuer or any of its Subsidiaries incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations, and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof (provided that such Indebtedness is incurred prior to or within 90 days after such acquisition or the completion of such construction or improvements), and extensions, renewals or replacements of any such Indebtedness that do not increase the outstanding principal amount thereof immediately prior to giving effect to such extension, renewal or replacement (except in respect of costs and expenses in connection therewith or any interest that is paid-in-kind and capitalized to the principal amount thereof in connection with such extension, renewal or replacement) or shorten the maturity or the Weighted Average Life to Maturity thereof; provided, that the aggregate principal amount of Indebtedness outstanding under this clause (iii) at any time (including any of such Indebtedness which is set forth on Schedule 7.1) does not exceed the greater of (A) $12,500,000 and (B) 1.50% of Consolidated Total Assets;

(iv) (A) intercompany Indebtedness between or among the Issuer and any Subsidiary Note Party and (B) intercompany Indebtedness between or among the Issuer and any Subsidiary that is not a Note Party permitted by Section 7.4(d);

(v) (A) Guarantees by the Issuer of Indebtedness of any Subsidiary Note Party and by any Subsidiary Note Party of Indebtedness of the Issuer or any other Subsidiary Note Party and (B) Guarantees by the Issuer of Indebtedness of any Subsidiary that is not a Note Party and by any Subsidiary of Indebtedness of the Issuer or any other Subsidiary that is not a Note Party permitted by Section 7.4(d);

(vi) Indebtedness in respect of performance, bid, surety, indemnity, appeal bonds, completion guarantees and other obligations of like nature and guarantees and/or obligations as an account party in respect of the face amount of letters of credit in respect thereof, in each case securing obligations not constituting Indebtedness for borrowed money (including workers' compensation claims, environmental remediation and other environmental matters and obligations in connection with self-insurance or similar requirements) provided in the ordinary course of business;

(vii) Indebtedness arising from the endorsement of instruments in the ordinary course of business;

(viii) Indebtedness consisting of contingent liabilities in respect of any indemnification, working capital adjustment, purchase price adjustment, non-compete, consulting, deferred compensation, earn-out obligations, contingent consideration, contributions, and similar obligations, incurred in connection with any Investment permitted under Section 7.4 or any disposition permitted under Section 7.6; provided that, with respect to any earn-out or other deferred or contingent purchase consideration in respect of a Permitted Acquisition, (x) such earn-out or other deferred or contingent purchase consideration shall be subordinated in right of payment to the Obligations and the Second Lien Obligations on terms acceptable to the Required Purchasers and the Required Purchasers (as defined in the Second Lien Note Purchase Agreement), (y) such earn-out or other deferred or contingent purchase consideration such shall be unsecured and (z) there shall be no obligors (including guarantors) in respect of such earn-out or other deferred or contingent purchase consideration other than (I) in the case of an Acquisition of the type described in clause (b) of the definition of Acquisition, the Person acquiring the assets of the applicable Target, (II) in the case of an Acquisition of the type described in clause (a) of the definition of Acquisition, the applicable Target (and for the avoidance of doubt, no subsidiaries of the applicable Target shall be obligors) and (III) in each case, any parent company of the Person acquiring such asset or Target, which parent company is a newly-formed holding company that holds no material assets, and has no material liabilities, other than equity interests in the Person acquiring such assets or Target;

(ix) Indebtedness consisting of the financing of insurance premiums required by this Agreement or otherwise incurred in the ordinary course of business;

(x) cash management obligations (including Bank Product Obligations) and other Indebtedness in respect of netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and other cash management and similar arrangements, in each case, in the ordinary course of business and any Guarantees thereof;

(xi) Hedging Obligations not prohibited by Section 7.10;

(xii) Indebtedness of the Issuer or any of its Subsidiaries owed to any supplier or vendor of Inventory incurred to finance the acquisition of Inventory from such supplier or vendor, including the ABDC Obligations; provided that, immediately after giving effect to any incurrence of Indebtedness under this clause (xii) on any date of determination, the aggregate principal amount of Indebtedness outstanding under this clause (xii) does not exceed $20,000,000 for any period of more than twenty (20) consecutive days after a Responsible Officer of the Issuer becomes aware of such excess outstanding amount;

(xiii) (A) unsecured Indebtedness evidenced by the Senior Notes outstanding on the Closing Date and (B) Permitted Refinancing Indebtedness in respect thereof;

(xiv) obligations arising under indemnity agreements or other arrangements with title insurers to cause such title insurers to issue title policies in the ordinary course of business;

(xv) Indebtedness representing deferred compensation or reimbursable expenses owed to employees of the Issuer or any of its Subsidiaries incurred in the ordinary course of business;

(xvi) Guarantees by the Issuer in the ordinary course of business of any obligations of any Subsidiary Note Party under an operating lease to which such Subsidiary Note Party is a party;

(xvii) other unsecured Indebtedness (other than Indebtedness for borrowed money); provided that the aggregate principal amount of Indebtedness outstanding under this clause (xvii) at any time does not exceed the greater of (A) $5,000,000 and (B) 1.00% of Consolidated Total Assets;

(xviii) the Second Lien Obligations to the extent all such obligations constitute “Second Lien Obligations” under the First Lien/Second Lien Intercreditor Agreement;

(xix) Indebtedness in respect of stand-by letters of credit; provided that the aggregate principal amount of Indebtedness outstanding under this clause (xix) shall not exceed $7,200,000; and

(xx) Permitted Seller Financing in respect of any Permitted Acquisition.

For purposes of determining compliance with this Section 7.1(a), in the event that any item of Indebtedness meets the criteria of more than one of the categories described in clauses (a)(i) through (a)(xvii), the Issuer and its Subsidiaries shall be permitted to incur any such Indebtedness in any manner that complies with this Section 7.1(a) and may rely at the time of incurrence upon more than one of the categories described above; provided that the ABDC Obligations shall be incurred and shall remain outstanding solely under clause (a)(xii) above.

(b) The Issuer will not, and will not permit any Subsidiary to, issue or permit to exist any Disqualified Capital Stock of any such Person.

Section 7.2 Liens. The Issuer will not, and will not permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Lien on any of its assets or property now owned or hereafter acquired, except:

(a) Liens securing the Obligations; provided that no Liens may secure Hedging Obligations or Bank Product Obligations without securing all other Obligations on a basis at least *pari passu* with such Hedging Obligations or Bank Product Obligations and subject to the priority of payments set forth in Section 2.18 and Section 8.2;

(b) Liens created under any Second Lien Note Document and securing the Second Lien Obligations permitted hereunder, so long as such Liens are securing the Second Lien Obligations in accordance with, and are subject to, the terms of the First Lien/Second Lien Intercreditor Agreement;

(c) Permitted Encumbrances;

(d) Liens on any property or asset of the Issuer or any of its Subsidiaries existing on the date hereof and set forth on Schedule 7.2; provided that such Liens shall not apply to any other property or asset of the Issuer or any Subsidiary;

(e) Liens securing Indebtedness incurred pursuant to Section 7.1(a)(iii); provided that (i) such Lien attaches to such asset concurrently or within ninety (90) days after the acquisition or the completion of the construction or improvements thereof, (ii) such Lien granted is limited to the specific fixed assets acquired, constructed or improved and the proceeds thereof and (iii) the aggregate principal amount of Indebtedness initially secured by such Lien is not more than the acquisition cost of the specific fixed assets on which such Lien is granted;

(f) Liens (other than the ABDC Lien) securing Indebtedness incurred pursuant to Section 7.1(a)(xii); provided that (i) such Lien granted is limited to the specific Inventory acquired and (ii) the aggregate principal amount of Indebtedness initially secured by such Lien is not more than the acquisition cost of the Inventory on which such Lien is granted; provided, further, that if, at any time after the Closing Date, the Issuer or any of its Subsidiaries grants such a Lien to a supplier or vendor and the aggregate principal amount of Indebtedness outstanding that is owed to such supplier or vendor and its Affiliates is in excess of $10,000,000, the Issuer or such Subsidiary shall use commercially reasonable efforts to enter into an intercreditor agreement (which shall contain terms and conditions that are substantially consistent with, but no less favorable to the Purchasers than, the ABDC Intercreditor Agreement) pursuant to which the Lien securing such Indebtedness owed to such supplier or vendor (and its affiliates) shall be subordinated to the Liens securing the Obligations;

(g) any Lien existing on any fixed assets prior to the acquisition thereof by the Issuer or any of its Subsidiaries or existing on any fixed assets of any Person that becomes a Subsidiary; provided that (i) such Lien was not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, (ii) such Lien does not apply to any other property of the Issuer or any of its Subsidiaries, and (iii) such Lien secures only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary;

(h) extensions, renewals, or replacements of any Lien referred to in clauses (b) through (g) of this Section; provided that the principal amount of the Indebtedness secured thereby is not increased (except in respect of costs and expenses in connection therewith or any interest that is paid-in-kind and capitalized to the principal amount thereof in connection with such extension, renewal or replacement) and that any such extension, renewal or replacement is limited to the assets originally encumbered thereby;

(i) the ABDC Lien so long as such Liens are subordinated to the Liens securing the Obligations pursuant to the terms of the ABDC Intercreditor Agreement; and

(j) Liens on cash collateral for letters of credit permitted pursuant to Section 7.1(a)(xix); provided that the amount of such cash collateral shall not exceed 105% of the face amount of such letters of credit.

Section 7.3 Fundamental Changes.

(a) The Issuer will not, and will not permit any of its Subsidiaries to, merge into or consolidate into any other Person, or permit any other Person to merge into or consolidate with it, or sell, lease, transfer or otherwise dispose of (in a single transaction or a series of transactions) all or substantially all of its assets (in each case, whether now owned or hereafter acquired) (except as permitted by Section 7.6) or all or substantially all of the Capital Stock of any of its Subsidiaries (in each case, whether now owned or hereafter acquired) or liquidate or dissolve; provided that if, at the time thereof and immediately after giving effect thereto, no Event of Default shall have occurred and be continuing, (i) the Issuer or any Subsidiary may merge with a Person if the Issuer (or such Subsidiary if the Issuer is not a party to such merger) is the surviving Person, (ii) any Subsidiary may merge into another Subsidiary, provided that if any party to such merger is a Subsidiary Note Party, the Subsidiary Note Party shall be the surviving Person, (iii) any Subsidiary may sell, transfer, lease or otherwise dispose of all or substantially all of its assets to the Issuer or to a Subsidiary Note Party, and (iv) any Subsidiary may liquidate or dissolve if the Issuer determines in good faith that such liquidation or dissolution is in the best interests of the Issuer.

(b) The Issuer will not, and will not permit any of its Subsidiaries to, engage in any business other than a Permitted Business.

Section 7.4 Investments, Loans. The Issuer will not, and will not permit any of its Subsidiaries to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a wholly owned Subsidiary prior to such merger) any Capital Stock, evidence of Indebtedness or other securities (including any option, warrant, or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or make any Acquisition (all of the foregoing being collectively called "Investments"), or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person that constitute a business unit, or create or form any Subsidiary, except:

(a) Investments existing on the date hereof and set forth on Schedule 7.4 (including Investments in Subsidiaries that are Note Parties);

(b) Investments in cash and Cash Equivalents;

(c) Guarantees by the Issuer and its Subsidiaries constituting Indebtedness permitted by Section 7.1;

(d) Investments made by the Issuer in or to any Subsidiary and by any Subsidiary to the Issuer or in or to another Subsidiary; provided, that (i) in the case of any Investment in the form of Indebtedness owed by a Note Party to a Subsidiary that is not a Note Party, such Indebtedness (and any related Guarantee provided by any Note Party) shall be subordinated to the Obligations on terms and pursuant to documentation in form and substance reasonably satisfactory to the Required Purchasers and (ii) the aggregate principal amount of all Investments made by a Note Party to a Subsidiary that is not a Note Party shall not exceed the greater of (A) $10,000,000 and (B) 1.50% of Consolidated Total Assets (net of cash actually received by the Issuer or any such Subsidiary in respect of any such Investments and determined without regard to any write-downs or write-offs of any investments, loans or advances in connection therewith);

(e) loans or advances to employees, officers or directors of the Issuer or any of its Subsidiaries in the ordinary course of business for travel, entertainment, relocation and related expenses; provided that the aggregate amount of all such loans and advances shall not exceed $2,000,000 at any time outstanding;

(f) Hedging Transactions not prohibited by Section 7.10;

(g) Investments received in satisfaction or partial satisfaction from financially troubled debtors or in connection with the bankruptcy or reorganization of suppliers or customers;

(h) Investments consisting of deposits, expense prepayments, accounts receivable arising, trade debt granted and other credits extended to suppliers, distributors or marketers in the ordinary course of business;

(i) Investments received as the non-cash portion of consideration received for dispositions not prohibited by Section 7.6;

(j) other Investments (other than Investments in any Subsidiary that is not a Note Party) which do not exceed $8,000,000 in the aggregate over the term of this Agreement; and

(k) Permitted Acquisitions.

Notwithstanding the foregoing, in no event shall the Issuer or any of its Subsidiaries make any investment in any Subsidiary formed for the purpose of holding assets of the Issuer and its Subsidiaries constituting the Issuer's and its Subsidiaries' PBM line of business.

For purposes of determining the amount of any Investment outstanding for purposes of this Section 7.4, such amount shall be deemed to be the cost of such Investment when made, purchased or acquired, net of any amount representing return of (but not return on) such Investment and without regard to any forgiveness of Indebtedness.

Section 7.5 Restricted Payments. The Issuer will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except:

(a) dividends payable by the Issuer solely in interests of any class of its common equity;

(b) Restricted Payments made by any Subsidiary to the Issuer or to another Subsidiary; provided that (i) if such Restricted Payment is made by a Subsidiary that is not wholly owned by the Issuer or another wholly owned Subsidiary of the Issuer, such Restricted Payment shall be made on at least a pro rata basis with any other shareholders of such non-wholly owned Subsidiary and (ii) other than any Restricted Payments consisting solely of required tax payments arising by virtue of any Subsidiary Note Party being a pass-through entity or being a member of a consolidated or other similar group for income tax purposes, if such Restricted Payment is made by a Subsidiary Note Party to a Subsidiary that is not a Note Party, no Default or Event of Default has occurred and is continuing before and immediately after giving effect to such payment;

(c) payments made by the Issuer under the ABDC Prime Vendor Agreement, to the extent permitted by the ABDC Intercreditor Agreement;

(d) scheduled payments of principal, interest and other amounts with respect to Subordinated Debt to the extent permitted by the terms of such Indebtedness and by the terms of any subordination agreement applicable thereto;

(e) Restricted Payments in the form of a non-cash repurchase of Capital Stock of the Issuer that is deemed to occur upon the exercise of stock options, warrants or other convertible or exchangeable securities to the extent that such Capital Stock represents a portion of the exercise price of those securities, in each case, pursuant to any equity-based compensation or incentive plan of the Issuer;

(f) dividends made in cash in lieu of the issuance of fractional shares of Capital Stock of the Issuer in connection with the exercise of warrants, options or other securities convertible into, or exchangeable for, Capital Stock of the Issuer pursuant to any equity-based compensation or incentive plan of the Issuer; and

(g) cash dividends, distributions, and share repurchases by the Issuer in respect of the Issuer's common Capital Stock so long as: (i) the aggregate amount of such cash dividends, distributions, and share repurchases does not exceed the Available Amount, (ii) after giving pro forma effect to such cash dividend, distribution, or share repurchase, the Consolidated Total Net Leverage Ratio is less than or equal to 2.50 to 1.00, calculated as of the last day of the most recently ended Fiscal Quarter for which financial statements are required to have been delivered pursuant to Section 5.1(b), and (iii) at the time of such cash dividend, distribution, or share repurchase and after giving effect thereto, no Default or Event of Default exists.

Section 7.6 Sale of Assets. The Issuer will not, and will not permit any of its Subsidiaries to, convey, sell, lease, assign, transfer or otherwise dispose of any of its assets, business or property or, in the case of any Subsidiary, any shares of such Subsidiary's Capital Stock, in each case whether now owned or hereafter acquired, to any Person other than the Issuer or a Subsidiary Note Party (or to qualify directors if required by applicable law), except:

(a) the sale or other disposition of damaged, scrap, obsolete or worn out property disposed of in the ordinary course of business;

(b) the sale of inventory in the ordinary course of business;

(c) the sale or other disposition of cash and Cash Equivalents in the ordinary course of business;

(d) the issuance of Capital Stock by any Subsidiary of the Issuer issued to the Issuer or any Subsidiary Note Party so long as such issuance does not result in a Change in Control;

(e) the occurrence of any casualty event, condemnation, eminent domain or other similar proceeding with respect to any assets or property of the Issuer or any of its Subsidiaries (provided that the Net Cash Proceeds thereof are used to prepay the Notes in accordance with Section 2.9(a)); and

(f) any other sale or disposition of assets not otherwise described in this Section 7.6 not to exceed $1,000,000 in the aggregate over the term of this Agreement, so long as (i) at least 75% of the aggregate consideration received in respect of such sale or disposition is received in cash or Cash Equivalents, (ii) such sales and dispositions shall be for fair market value (provided that the Net Cash Proceeds thereof are used to prepay the Notes in accordance with Section 2.9(a)) and (iii) such sales and dispositions are made to a Person that is not an Affiliate of the Issuer.

Section 7.7 Transactions with Affiliates. The Issuer will not, and will not permit any of its Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except:

(a) in the ordinary course of business at prices and on terms and conditions not less favorable to the Issuer or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties;

(b) transactions (i) between or among the Issuer and any Subsidiary Note Party not involving any other Affiliates (other than any other Subsidiary Note Party) or (ii) between or among the Issuer or any Subsidiary Note Party and any Subsidiary that is not a Note Party that are not otherwise prohibited by this Agreement (in each case, subject to the terms and conditions therefor, if any);

(c) any Restricted Payment permitted by Section 7.5;

(d) transactions in respect of compensation or employment, separation and severance of officers, directors or employees and the establishment and maintenance of benefit programs or arrangements with employees, officers or directors, including vacation plans, health and life insurance plans, deferred compensation plans and retirement or savings plans and similar plans or equity incentive or equity option plans, in each case, in the ordinary course of business; and

(e) any transaction set forth on Schedule 7.7 as of the Closing Date.

Section 7.8 **Restrictive Agreements.** The Issuer will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement that prohibits, restricts or imposes any condition upon (a) the ability of the Issuer or any of its Subsidiaries to create, incur or permit any Lien upon any of its assets or properties, whether now owned or hereafter acquired, or (b) the ability of any of its Subsidiaries to pay dividends or other distributions with respect to its Capital Stock, to make or repay loans or advances to the Issuer or any other Subsidiary thereof, to Guarantee Indebtedness of the Issuer or any other Subsidiary thereof or to transfer any of its property or assets to the Issuer or any other Subsidiary thereof; provided that (i) the foregoing shall not apply to restrictions or conditions imposed by law or by this Agreement, any other Note Document, the Second Lien Note Purchase Agreement or any other Second Lien Note Documents, (ii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided such restrictions and conditions apply only to the Subsidiary that is sold and such sale is permitted hereunder, (iii) clause (a) shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions and conditions apply only to the property or assets securing such Indebtedness, (iv) clause (a) shall not apply to customary provisions in leases, licenses, licensing agreements and other contracts restricting the assignment thereof and (v) the foregoing shall not apply to any restrictions and conditions imposed on any Foreign Subsidiary by the terms of any Indebtedness of such Foreign Subsidiary permitted to be incurred hereunder, and (vi) the foregoing shall not apply to any Specified Strategic Joint Venture.

Section 7.9 **Sale and Leaseback Transactions.** The Issuer will not, and will not permit any of its Subsidiaries to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereinafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred.

Section 7.10 **Hedging Transactions.** The Issuer will not, and will not permit any of its Subsidiaries to, enter into any Hedging Transaction, other than Hedging Transactions entered into in the ordinary course of business to hedge or mitigate risks to which the Issuer or any of its Subsidiaries is exposed in the conduct of its business or the management of its liabilities. Solely for the avoidance of doubt, the Issuer acknowledges that a Hedging Transaction entered into for speculative purposes or of a speculative nature (which shall be deemed to include any Hedging Transaction under which the Issuer or any of its Subsidiaries is or may become obliged to make any payment (a) in connection with the purchase by any third party of any Capital Stock or any Indebtedness or (b) as a result of changes in the market value of any Capital Stock or any Indebtedness) is not a Hedging Transaction entered into in the ordinary course of business to hedge or mitigate risks.

Section 7.11 **Amendment to Material Documents.** The Issuer will not, and will not permit any of its Subsidiaries to, amend, modify or waive any of its rights under (a) its certificate of incorporation, bylaws or other organizational documents in any manner that would reasonably be expected to be materially adverse to the Purchasers (it being agreed that any such amendment or modification effected in accordance with Section 5.2(x) or in order to consummate a transaction permitted by Section 7.3 shall not be deemed to be materially adverse to the Purchasers), (b) any Material Agreements (other than to the extent expressly covered by clauses (c) and (d) below) in any manner that would reasonably be expected to be adverse to the Purchasers in any material respect, (c) any Second Lien Note Document, except as permitted by the First Lien/Second Lien Intercreditor Agreement or (d) the Senior Notes Indenture or the Senior Notes (or any documentation governing any Permitted Refinancing Indebtedness) if, after giving effect to any such amendment, modification or waiver, the Senior Notes Indenture and the Senior Notes (or such documentation governing any Permitted Refinancing Indebtedness) as so amended, modified or waived would not meet each of the requirements set forth in the proviso to the definition of "Permitted Refinancing Indebtedness".

Section 7.12 **Accounting Changes.** The Issuer will not, and will not permit any of its Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required by GAAP, or change the Fiscal Year of the Issuer or of any of its Subsidiaries, except to change the Fiscal Year of a Subsidiary to conform its Fiscal Year to that of the Issuer.

Section 7.13 **Compliance with Anti-Terrorism and Anti-Corruption Laws and Sanctions.** No Note Party shall, and no Note Party shall permit any of its Affiliates to: (a) (i) violate any Anti-Terrorism Laws or Anti-Corruption Laws, (ii) engage in any transaction, investment, undertaking or activity that conceals the identity, source or destination of the proceeds from any category of prohibited offenses designated by the Organization for Economic Co-operation and Development's Financial Action Task Force on Money Laundering, (iii) become (including by virtue of being owned or controlled by a Blocked Person), own or control a Blocked Person or any other Sanctioned Person or (iv) knowingly permit any of their respective Affiliates to violate these laws or engage in these actions; (b) use, directly or indirectly, the proceeds of the Notes, or lend, contribute or otherwise make available such proceeds to any Person, (x) to fund any activities or business of or with any Sanctioned Person or Sanctioned Country, or (y) in any other manner that would result in a violation of Sanctions or any Anti-Terrorism Laws or Anti-Corruption Laws by any Person (including any Person participating in the Notes, whether as underwriter, advisor, investor, or otherwise); or (c) (i) deal in, or otherwise engage in any transaction related to, any property or interests in property blocked pursuant to any Anti-Terrorism Law or Sanctions, or (ii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempt to violate, any of the prohibitions set forth in any Anti-Terrorism Law or Sanctions or (iii) knowingly permit any of their respective Affiliates to do any of the foregoing.

Section 7.14 **Health Care Matters.** Without limiting or being limited by any other provision of any Note Document, and except as would not reasonably be expected to have a Material Adverse Effect, the Issuer will not, and will not permit any of its Subsidiaries to, (i) fail to maintain in effect all Licenses, Company Accreditations and Company Reimbursement Approvals, 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 License, Company Accreditation or Company Reimbursement Approval or any Healthcare Laws, or (b) cause the Issuer or any of its Subsidiaries not to be in compliance with any Healthcare Laws.

Section 7.15 **ERISA.** No Note Party shall, or shall cause or permit any ERISA Affiliate to, cause or permit to occur an ERISA Event to the extent such ERISA Event would reasonably be expected to have a Material Adverse Effect.

Section 7.16 **Payments in Respect of Senior Notes.** Except for the refinancing of the Senior Notes with the proceeds of Permitted Refinancing Indebtedness, the Issuer will not, and will not permit any of its Subsidiaries to, make any optional payment or optional prepayment of principal of, premium, if any, interest, fees or other amounts on or with respect to, or any redemption, purchase, retirement, defeasance, sinking fund or similar payment or claim for rescission with respect to, the Senior Notes (or any Permitted Refinancing Indebtedness).

Section 7.17 **Anti-Layering.** Notwithstanding anything herein to the contrary, no Note Party shall, and no Note Party shall permit any of its Subsidiaries to, create or incur any Indebtedness which is secured by a Lien on the Collateral, which Lien is subordinated in right of priority to the Lien securing the Second Lien Obligations, unless the Lien securing such Indebtedness is also subordinated in right of priority in the same manner and to the same extent, to the Lien securing the Obligations.

Section 7.18 **Second Lien Obligations.** No Note Party shall, and no Note Party shall permit any Subsidiary or Affiliate of such Note Party to, hold any Second Lien Obligations.

ARTICLE VIII

EVENTS OF DEFAULT

Section 8.1 **Events of Default.** If any of the following events (each, an "Event of Default") shall occur:

(a) the Issuer shall fail to pay any principal of any Note, when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment or otherwise; or

(b) the Issuer shall fail to pay any interest on any Note or any fee, Prepayment Premium, premium or any other amount (other than an amount payable under clause (a) of this Section or an amount related to a Bank Product Obligation) payable under this Agreement or any other Note Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) Business Days; or

(c) any representation or warranty made or deemed made by or on behalf of the Issuer or any of its Subsidiaries in or in connection with this Agreement or any other Note Document (including the Schedules attached hereto and thereto), or in any amendments or modifications hereof or waivers hereunder, or in any certificate, report, financial statement or other document submitted to the Collateral Agent or the Purchasers by any Note Party or any representative of any Note Party pursuant to or in connection with this Agreement or any other Note Document shall prove to be incorrect in any material respect (other than any representation or warranty that is expressly qualified by a Material Adverse Effect or other materiality, in which case such representation or warranty shall prove to be incorrect in any respect) when made or deemed made; or

(d) the Issuer shall fail to observe or perform any covenant or agreement contained in (i) Section 5.1 and such failure shall remain unremedied for five (5) days or (ii) Section 5.2, 5.3 (with respect to the Issuer's legal existence), 5.7, 5.9, 5.11, 5.16, Article VI or Article VII; or

(e) (i) any Note Party shall fail to observe or perform any covenant or agreement contained in this Agreement (other than those referred to in clauses (a), (b) and (d) of this Section) or any other Note Document or related to any Bank Product Obligation, and such failure shall remain unremedied for 30 days after the earlier of (A) any Responsible Officer of the Issuer becomes aware of such failure, or (B) written notice thereof shall have been given to the Issuer by the Collateral Agent or any Purchaser or (ii) any "Event of Default" as defined in any Note Document shall have occurred and be continuing; or

(f) (i) the Issuer or any of its Subsidiaries (whether as primary obligor or as guarantor or other surety) shall fail to pay any principal of, or premium or interest on, or any other amount owed under the ABDC Obligations, any Material Indebtedness (other than any Hedging Obligations) or any Material Permitted Seller Financing that is outstanding, in each case, when and as the same shall become due and payable (whether at scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument evidencing or governing the ABDC Obligations, such Material Indebtedness or such Material Permitted Seller Financing, as applicable; or any other event shall occur or condition shall exist under any agreement or instrument relating to the ABDC Obligations (including, without limitation, any default under the ABDC Prime Vendor Agreement), any Material Indebtedness or any Material Permitted Seller Financing and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or permit the acceleration of, the maturity of the ABDC Obligations, such Material Indebtedness or such Material Permitted Seller Financing; or the ABDC Obligations, any Material Indebtedness or any Material Permitted Seller Financing shall be declared to be due and payable, or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), purchased or defeased, or any offer to prepay, redeem, purchase or defease the ABDC Obligations, such Indebtedness or such Material Permitted Seller Financing shall be required to be made, in each case prior to the stated maturity thereof or (ii) there occurs under any Hedging Transaction an Early Termination Date (as defined in such Hedging Transaction) resulting from (A) any event of default under such Hedging Transaction as to which the Issuer or any of its Subsidiaries is the Defaulting Party (as defined in such Hedging Transaction) and the Hedge Termination Value owed by the Issuer or such Subsidiary as a result thereof is greater than $12,500,000 or (B) any Termination Event (as so defined) under such Hedging Transaction as to which the Issuer or any Subsidiary is an Affected Party (as so defined) and the Hedge Termination Value owed by the Issuer or such Subsidiary as a result thereof is greater than $12,500,000 and is not paid; or

(g) the Issuer or any of its Subsidiaries shall (i) commence a voluntary case or other proceeding or file any petition seeking liquidation, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a custodian, trustee, receiver, liquidator or other similar official of it or any substantial part of its property, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) of this Section, (iii) apply for or consent to the appointment of a custodian, trustee, receiver, liquidator or other similar official for the Issuer or any such Subsidiary or for a substantial part of its assets, (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, or (vi) take any action for the purpose of effecting any of the foregoing; or

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Issuer or any of its Subsidiaries or its debts, or any substantial part of its assets, under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) the appointment of a custodian, trustee, receiver, liquidator or other similar official for the Issuer or any of its Subsidiaries or for a substantial part of its assets, and in any such case, such proceeding or petition shall remain undismissed for a period of 60 days or an order or decree approving or ordering any of the foregoing shall be entered; or

(i) the Issuer or any of its Subsidiaries shall become unable to generally pay, shall admit in writing its inability to generally pay, or shall fail to pay, its debts as they become due; or

(j) (i) an ERISA Event shall have occurred that, when taken together with other ERISA Events that have occurred, would reasonably be expected to result in liability to the Issuer and its Subsidiaries in an aggregate amount exceeding $12,500,000, (ii) there is or arises an Unfunded Pension Liability (not taking into account Plans with negative Unfunded Pension Liability) in an aggregate amount exceeding $12,500,000, or (iii) there is or arises any potential Withdrawal Liability in an aggregate amount exceeding $12,500,000; or

(k) any final non-consensual judgment or order for the payment of money (to the extent not covered by insurance as to which the insurer has been notified of such judgment and has not denied coverage in writing) in excess of $12,500,000 individually (or, together with any related non-consensual judgment or order, in the aggregate) shall be rendered against the Issuer or any of its Subsidiaries, and either (i) enforcement proceedings shall have been commenced by any creditor upon such non-consensual judgment or order or (ii) such non-consensual judgment or order remains unvacated, unbounded or unstayed for a period of 30 consecutive days; or

(l) any final non-monetary judgment or order shall be rendered against the Issuer or any of its Subsidiaries that would reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, and there shall be a period of 30 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(m) a Change in Control shall occur or exist; or

(n) all or any material portion or provision of the Guaranty and Security Agreement, the ABDC Intercreditor Agreement, the First Lien/Second Lien Intercreditor Agreement, or any other Note Document shall for any reason (other than (x) solely as a result of any action or inaction on the part of the Collateral Agent or any Purchaser, or (y) in accordance with its terms) cease to be valid and binding on, or enforceable against, any Note Party, or any Note Party shall so state in writing, or any Note Party shall seek to terminate its obligation under the Guaranty and Security Agreement, the ABDC Intercreditor Agreement, the First Lien/Second Lien Intercreditor Agreement, or any other Note Document (other than the release of any guaranty or collateral in accordance with Section 9.11 or any other release in accordance with the terms of such document or otherwise in accordance with the terms hereof); or

(o) any Lien purported to be created under any Collateral Document shall fail or cease to be, or shall be asserted by any Note Party not to be, a valid and perfected, and, except for Specified Permitted Liens, first priority Lien on any Collateral (other than, in each case, solely as a result of any action or inaction on the part of any Purchaser); or

(p) (i) the commencement by any Governmental Authority of any proceeding or hearing relating to the criminal and/or civil violation of any Governmental Payor Arrangement or License of the Issuer or any of its Subsidiaries, to the extent such proceeding or hearing would reasonably be expected to have a Material Adverse Effect; (ii) there shall have occurred the involuntary termination of, or the receipt by the Issuer or any of its Subsidiaries of notice of the involuntary 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 involuntary termination of, any Governmental Payor Arrangement, Third Party Payor Arrangement, License, or Company Accreditation of the Issuer or any of its Subsidiaries, except for involuntary terminations that would not be expected to have a Material Adverse Effect; or (iii) the imposition of any overpayment in an amount in excess of $5,000,000 by any Governmental Authority or Third Party Payor under any Healthcare Law or pursuant to any Governmental Payor Arrangement or Third Party Payor Arrangement, as applicable; or

(q) the Issuer or any of its Subsidiaries or any of their respective directors or officers is criminally convicted under any law or Requirement of Law that would reasonably be expected to lead to (i) a forfeiture of a portion of Collateral or (ii) exclusion from participation in any federal or state health care program, including Medicare or Medicaid, and such exclusion would reasonably be expected to result in a Material Adverse Effect;

then, and in every such event (other than an event with respect to the Issuer described in clause (g) or (h) of this Section) and at any time thereafter during the continuance of such event, the Required Purchasers may, by notice to the Issuer, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, whereupon the Commitment of each Purchaser shall terminate immediately, (ii) declare the principal of and any accrued interest on the Notes, and all other Obligations owing hereunder, to be, whereupon the same shall become, due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Issuer, (iii) exercise all remedies contained in any other Note Document, and (iv) exercise any other remedies available at law or in equity; provided that, if an Event of Default specified in either clause (g) or (h) shall occur, the Commitments shall automatically terminate and the principal of the Notes then outstanding, together with accrued interest thereon, and all fees and all other Obligations shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Issuer.

If the Notes are accelerated or otherwise become due prior to their maturity date, in each case, as a result of an Event of Default (including, but not limited to, upon the occurrence of an Event of Default specified in clause (g) or (h) of Section 8.1 (including the acceleration of claims by operation of law)), the amount of principal of and premium on the Notes that becomes due and payable shall equal 100% of the principal amount of the Notes plus the Prepayment Premium in effect on the date of such acceleration or such other prior due date, as if such acceleration or other occurrence were a voluntary prepayment of the Notes accelerated or otherwise becoming due. Without limiting the generality of the foregoing, it is understood and agreed that if the Notes are accelerated or otherwise become due prior to their maturity date, in each case, in respect of any Event of Default (including, but not limited to, upon the occurrence of an Event of Default specified in clause (g) or (h) of Section 8.1 (including the acceleration of claims by operation of law)), the Prepayment Premium applicable with respect to a voluntary prepayment of the Notes will also be due and payable on the date of such acceleration or such other prior due date as though the Notes were voluntarily prepaid as of such date and shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Purchaser's lost profits as a result thereof.

Section 8.2 Application of Proceeds from Collateral. All proceeds from each sale of, or other realization upon, all or any part of the Collateral by any Secured Party after an Event of Default arises shall be applied as follows:

(a) first, to the reimbursable expenses of the Collateral Agent incurred in connection with such sale or other realization upon the Collateral, until the same shall have been paid in full;

(b) second, to all amounts owed to the Collateral Agent then due and payable pursuant to any of the Note Documents, until the same shall have been paid in full;

(c) third, to all reimbursable expenses, if any, of the Purchasers then due and payable pursuant to any of the Note Documents, until the same shall have been paid in full;

(d) fourth, to the fees, interest, Prepayment Premiums and premiums then due and payable under the terms of this Agreement, until the same shall have been paid in full;

(e) fifth, to the aggregate outstanding principal amount of the Notes, the Bank Product Obligations and the Net Mark-to-Market Exposure of the Hedging Obligations that constitute Obligations, until the same shall have been paid in full, allocated *pro rata* among the Secured Parties based on their respective *pro rata* shares of the aggregate amount of such Notes, Bank Product Obligations and Net Mark-to-Market Exposure of such Hedging Obligations; provided, however, that no amount received from any Guarantor (including any proceeds of any sale of, or other realization upon, all or any part of the Collateral owned by such Guarantor) shall be applied to any Excluded Swap Obligation of such Guarantor; and

(f) sixth, to the extent any proceeds remain, to the Issuer or as otherwise provided by a court of competent jurisdiction.

All amounts allocated pursuant to the foregoing clauses third through fifth to the Purchasers as a result of amounts owed to the Purchasers under the Note Documents shall be allocated among, and distributed to, the Purchasers *pro rata* based on their respective Pro Rata Shares.

Notwithstanding the foregoing, Bank Product Obligations and Hedging Obligations shall be excluded from the application described above if the Collateral Agent has not received written notice thereof (to the extent required by the terms hereof), together with such supporting documentation as the Collateral Agent may request, from the Bank Product Provider or the Purchaser-Related Hedge Provider, as the case may be. Each Bank Product Provider or Purchaser-Related Hedge Provider that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Collateral Agent pursuant to the terms of Article IX hereof for itself and its Affiliates as if a "Purchaser" party hereto.

ARTICLE IX

THE COLLATERAL AGENT

Section 9.1 Appointment of the Collateral Agent.

(a) Each Purchaser irrevocably appoints Wells Fargo Bank, National Association as the Collateral Agent and authorizes it to take such actions on its behalf and to exercise such powers as are delegated to the Collateral Agent under this Agreement and the other Note Documents. The Collateral Agent may perform any of its duties hereunder or under the other Note Documents by or through any one or more sub-agents or attorneys-in-fact appointed by the Collateral Agent, and the Collateral Agent shall not be liable for the negligence or misconduct of such sub-agents or attorneys-in-fact appointed with due care. The Collateral Agent and any such sub-agent or attorney-in-fact may perform any and all of its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions set forth in this Article shall apply to any such sub-agent, attorney-in-fact or Related Party. Without limiting the generality of the foregoing, each Secured Party (other than the Collateral Agent) acknowledges that it has received a copy of the First Lien/Second Lien Intercreditor Agreement, consents to and authorizes the Collateral Agent's execution and delivery thereof on behalf of such Secured Party and agrees to be bound by the terms and provisions thereof, including any purchase option contained therein.

Section 9.2 Nature of Duties of the Collateral Agent. The Collateral Agent shall not have any duties or obligations except those expressly set forth in this Agreement and the other Note Documents. Without limiting the generality of the foregoing, (a) the Collateral Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or an Event of Default has occurred and is continuing, (b) the Collateral Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except those discretionary rights and powers expressly contemplated by the Note Documents that the Collateral Agent is directed to exercise in writing by the Required Purchasers (or such other number or percentage of the Purchasers as shall be necessary under the circumstances as provided in Section 10.2), and the Collateral Agent shall, subject to the immediately following proviso, take any action as directed by the Required Purchasers (or such other number or percentage of the Purchasers as shall be necessary under the circumstances as provided in Section 10.2), provided that the Collateral Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Collateral Agent to liability or that is contrary to any Note Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Purchaser in violation of any Debtor Relief Law; and (c) except as expressly set forth in the Note Documents, the Collateral Agent shall not have any duty to disclose (unless required by a court or regulatory body), and shall not be liable for the failure to disclose, any information relating to the Issuer or any of its Subsidiaries that is communicated to or obtained by the Collateral Agent or any of its Affiliates in any capacity. The Collateral Agent shall not be liable for any action taken or not taken by it, its sub-agents or its attorneys-in-fact with the consent or at the request of the Required Purchasers (or such other number or percentage of the Purchasers set forth herein or in the other Note Documents). The Collateral Agent shall not be deemed to have knowledge of any Default or Event of Default unless a Responsible Officer of the Collateral Agent (i) has actual knowledge thereof or (ii) receives written notice thereof (which notice shall include an express reference to such event being a "Default" or "Event of Default" hereunder), and the Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Note Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements, or other terms and conditions set forth in any Note Document, (iv) the validity, enforceability, effectiveness or genuineness of any Note Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article III or elsewhere in any Note Document, other than to confirm receipt of items expressly required to be delivered to the Collateral Agent, or (vi) any other matter hereunder or under the other Note Documents. The Collateral Agent may consult with legal counsel (including counsel for the Issuer) concerning all matters pertaining to such duties. In the event that the Collateral Agent receives any notice or other communication pursuant to the First Lien/Second Lien Intercreditor Agreement, the ABDC Intercreditor Agreement or any other intercreditor agreement or subordination agreement, the Collateral Agent shall promptly deliver a copy of such notice or other communication to each of the Purchasers.

Section 9.3 Lack of Reliance on the Collateral Agent. Each of the Purchasers acknowledges that it has, independently and without reliance upon the Collateral Agent or any other Purchaser and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement, and that the Collateral Agent has not been, and will not be, acting as an advisor, agent or fiduciary for such Purchaser. Each of the Purchasers also acknowledges that it will, independently and without reliance upon the Collateral Agent or any other Purchaser and based on such documents and information as it has deemed appropriate, continue to make its own decisions in taking or not taking any action under or based on this Agreement, any related agreement or any document furnished hereunder or thereunder.

Section 9.4 Certain Rights of the Collateral Agent.

(a) Notwithstanding anything else to the contrary herein, whenever reference is made in this Agreement to any discretionary action by, consent, designation, specification, requirement or approval of, notice, request or other communication from, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by the Collateral Agent or to any election, decision, opinion, acceptance, use of judgment, expression of satisfaction, reasonable satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by the Collateral Agent, it is understood that in all cases the Collateral Agent shall be acting at the direction of the Required Purchasers. In all cases, the Collateral Agent shall be fully justified in failing or refusing to take any such action under this Agreement if it shall not have received such written instruction, advice or concurrence of the Required Purchasers, as it deems appropriate. Without limiting the foregoing, no Purchaser shall have any right of action whatsoever against the Collateral Agent as a result of the Collateral Agent acting or refraining from acting hereunder in accordance with the instructions of the Required Purchasers where required by the terms of this Agreement. If instructed to take action outside of the scope of its duties set forth herein, the Collateral Agent shall not be required to act until it shall have received such indemnity or security from the Purchasers as it may reasonably require for all costs, claims, losses, expenses (including reasonable legal fees and expenses) and liabilities which it will or may expend or incur in complying or continuing to comply with such instructions.

(b) For purposes of clarity, phrases such as "satisfactory to the Collateral Agent", "approved by the Collateral Agent", "acceptable to the Collateral Agent", "in the Collateral Agent's discretion", and phrases of similar import, except as otherwise expressly provided herein, authorize and permit the Collateral Agent to act or decline to act in its discretion.

Section 9.5 **Reliance by the Collateral Agent.** The Collateral 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, posting or other distribution) believed by it to be genuine and to have been signed, sent or made by the proper Person. The Collateral Agent may also rely upon any statement made to it orally or by telephone and shall not incur any liability for relying thereon. The Collateral Agent may consult with legal counsel (including counsel for the Issuer), independent public accountants and other experts selected by it and shall not be liable for any action taken or not taken by it in accordance with the advice of such counsel, accountants or experts.

Section 9.6 **The Collateral Agent in its Individual Capacity.** The Person serving as the Collateral Agent shall have the same rights and powers under this Agreement and any other Note Document in its capacity as a Purchaser (if such Person is a Purchaser) as any other Purchaser and may exercise or refrain from exercising the same as though it were not the Collateral Agent; and the terms "Purchasers", "Required Purchasers", or any similar terms shall, unless the context clearly otherwise indicates, include the Collateral Agent in its individual capacity (if the Collateral Agent in its individual capacity is a Purchaser). The Person acting as the Collateral Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of business with the Issuer or any Subsidiary or Affiliate of the Issuer as if it were not the Collateral Agent hereunder.

Section 9.7 **No Filing Obligation.** For the avoidance of doubt, nothing herein shall require the Collateral Agent to file financing statements, termination statements or continuation statements, or be responsible for maintaining the security interests purported to be created as described herein (except for the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder or under any other Note Documents) and such responsibility shall be solely that of the Note Parties; provided that, upon the written direction of the Required Purchasers, the Collateral Agent shall file financing statements, termination statements or continuation statements. The Collateral Agent shall not be responsible for and makes no representation as to the existence, genuineness, value or protection of any Collateral, for the legality, effectiveness or sufficiency of any Note Document, or for the creation, perfection (or maintenance of such perfection), priority, sufficiency or protection of any liens securing the Obligations.

Section 9.8 **Successor Collateral Agent**.

(a) The Collateral Agent may resign at any time by giving notice thereof to the Purchasers and the Issuer. Upon any such resignation, the Required Purchasers shall have the right to appoint a successor Collateral Agent, subject to approval by the Issuer provided that no Default or Event of Default shall exist at such time. If no successor Collateral Agent shall have been so appointed, and shall have accepted such appointment within 30 days after the retiring Collateral Agent gives notice of resignation, then the retiring Collateral Agent may, on behalf of the Purchasers, appoint a successor Collateral Agent which shall be organized under the laws of the United States or any state thereof or maintain an office in the United States.

(b) Upon the acceptance of its appointment as the Collateral Agent hereunder by a successor, such successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent, and the retiring Collateral Agent shall be discharged from its duties and obligations under this Agreement and the other Note Documents. If, within 45 days after written notice is given of the retiring Collateral Agent's resignation under this Section, no successor Collateral Agent shall have been appointed and shall have accepted such appointment, then on such 45th day (i) the retiring Collateral Agent's resignation shall become effective (except the retiring Collateral Agent shall continue to hold such collateral security as nominee until such time as a successor Collateral Agent is appointed or the Collateral Agent can apply to a court of competent jurisdiction to deposit funds with such court), (ii) the retiring Collateral Agent shall thereupon be discharged from its duties and obligations under the Note Documents and (iii) the Required Purchasers shall thereafter perform all duties of the retiring Collateral Agent under the Note Documents until such time as the Required Purchasers appoint a successor Collateral Agent as provided above. After any retiring Collateral Agent's resignation hereunder, the rights, protections and indemnities afforded to the Collateral Agent in the Note Documents shall continue in effect for the benefit of such retiring or removed Collateral Agent and its representatives and agents in respect of any actions taken or not taken by any of them while it was serving as the Collateral Agent.

(c) Any corporation into which the Collateral Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Collateral Agent shall be a party, or any corporation succeeding to all or substantially all of the Collateral Agent's business, shall be the successor of the Collateral Agent hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

Section 9.9 The Collateral Agent May File Proofs of Claim.

(a) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Note Party, the Collateral Agent (irrespective of whether the principal of any Note shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Collateral Agent shall have made any demand on the Issuer) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Notes and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Purchasers and the Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Purchasers and the Collateral Agent and its agents and counsel and all other amounts due the Purchasers and the Collateral Agent hereunder or in connection herewith) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same.

(b) Any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Purchaser to make such payments to the Collateral Agent and, if the Collateral Agent shall consent to the making of such payments directly to the Purchasers, to pay to the Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Collateral Agent and its agents and counsel, and any other amounts due the Collateral Agent under this Agreement.

Nothing contained herein shall be deemed to authorize the Collateral Agent to authorize or consent to or accept or adopt on behalf of any Purchaser any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Purchaser or to authorize the Collateral Agent to vote in respect of the claim of any Purchaser in any such proceeding.

Section 9.10 Authorization to Execute Other Note Documents. Each Purchaser hereby authorizes the Collateral Agent to execute on behalf of all Purchasers all Note Documents (including, without limitation, the First Lien/Second Lien Intercreditor Agreement, the Collateral Documents and any subordination agreements) other than this Agreement.

Section 9.11 Collateral and Guaranty Matters. The Purchasers irrevocably authorize the Collateral Agent, at its option and in its discretion:

(a) to release any Lien on any property granted to or held by the Collateral Agent under any Note Document (i) upon the payment in full of all Obligations (other than Hedging Obligations owed by any Note Party to any Purchaser-Related Hedge Provider, Bank Product Obligations and indemnities and other contingent obligations not then due and payable and as to which no claim has been made), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Note Document, or (iii) if approved, authorized or ratified in writing in accordance with Section 10.2; and

(b) to release any Note Party from its obligations under the applicable Collateral Documents if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon confirmation in writing from the Required Purchasers of the Collateral Agent's authority to release its interest in particular types or items of property, or to release any Note Party from its obligations under the applicable Collateral Documents pursuant to this Section, the Collateral Agent will so release its interest such types or items of property, or release such Note Party from its obligations under the applicable Collateral Documents. In each case as specified in this Section, the Collateral Agent is authorized, at the Issuer's expense, to execute and deliver to the applicable Note Party such documents as such Note Party may reasonably request to evidence the release of such item of Collateral from the Liens granted under the applicable Collateral Documents, or to release such Note Party from its obligations under the applicable Collateral Documents, in each case in accordance with the terms of the Note Documents and this Section.

Section 9.12 Right to Realize on Collateral and Enforce Guarantee. Anything contained in any of the Note Documents to the contrary notwithstanding, the Issuer, the Collateral Agent and each Purchaser hereby agree that (i) no Purchaser shall have any right individually to realize upon any of the Collateral or to enforce the Collateral Documents, it being understood and agreed that all powers, rights and remedies under the Collateral Documents may be exercised solely by the Collateral Agent, and (ii) in the event of a foreclosure by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Collateral Agent or any Purchaser may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Collateral Agent, as agent for and representative of the Purchasers (but not any Purchaser or Purchasers in its or their respective individual capacities unless the Required Purchasers shall otherwise agree in writing), shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other disposition.

Section 9.13 **Secured Bank Product Obligations and Hedging Obligations.** No Bank Product Provider or Purchaser-Related Hedge Provider that obtains the benefits of Section 8.2, the Collateral Documents or any Collateral by virtue of the provisions hereof or of any other Note Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Note Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Purchaser and, in such case, only to the extent expressly provided in the Note Documents. Notwithstanding any other provision of this Article to the contrary, the Collateral Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Bank Product Obligations and Hedging Obligations unless the Collateral Agent has received written notice of such Obligations, together with such supporting documentation as the Collateral Agent may request, from the applicable Bank Product Provider or Purchaser-Related Hedge Provider, as the case may be.

Section 9.14 **ABDC INTERCREDITOR AGREEMENT.** EACH PURCHASER (A) AGREES THAT IT WILL BE BOUND BY, AND WILL TAKE NO ACTIONS CONTRARY TO, THE PROVISIONS OF THE ABDC INTERCREDITOR AGREEMENT, (B) AUTHORIZES AND INSTRUCTS THE COLLATERAL AGENT TO ENTER INTO THE ABDC INTERCREDITOR AGREEMENT AS COLLATERAL AGENT ON BEHALF OF SUCH PURCHASER, AND TO TAKE ALL ACTIONS (AND EXECUTE ALL DOCUMENTS) REQUIRED (OR DEEMED ADVISABLE) IN ACCORDANCE WITH THE TERMS OF THE ABDC INTERCREDITOR AGREEMENT, AND (C) ACKNOWLEDGES THAT A COPY OF THE ABDC INTERCREDITOR AGREEMENT WAS MADE AVAILABLE TO SUCH PURCHASER AND THAT SUCH PURCHASER REVIEWED THE ABDC INTERCREDITOR AGREEMENT. NOT IN LIMITATION OF THE FOREGOING, EACH PURCHASER HEREBY AGREES THAT THE COLLATERAL AGENT SHALL EXERCISE ALL RIGHTS AND REMEDIES UNDER THE ABDC INTERCREDITOR AGREEMENT ON BEHALF OF SUCH PURCHASER.

Section 9.15 **FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT.** EACH PURCHASER (A) AGREES THAT IT WILL BE BOUND BY, AND WILL TAKE NO ACTIONS CONTRARY TO, THE PROVISIONS OF THE FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT, (B) AUTHORIZES AND INSTRUCTS THE COLLATERAL AGENT TO ENTER INTO THE FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT AS COLLATERAL AGENT ON BEHALF OF SUCH PURCHASER, AND TO TAKE ALL ACTIONS (AND EXECUTE ALL DOCUMENTS) REQUIRED (OR DEEMED ADVISABLE) IN ACCORDANCE WITH THE TERMS OF THE FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT, AND (C) ACKNOWLEDGES THAT A COPY OF THE FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT WAS MADE AVAILABLE TO SUCH PURCHASER AND THAT SUCH PURCHASER REVIEWED THE FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT. EACH PURCHASER IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS OF THE FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT AND THE TERMS AND PROVISIONS THEREOF, AND NEITHER THE COLLATERAL AGENT NOR ANY OF ITS AFFILIATES MAKES ANY REPRESENTATION TO ANY PURCHASER AS TO THE SUFFICIENCY OR THE ADVISABILITY OF THE PROVISIONS CONTAINED THEREIN. NOT IN LIMITATION OF THE FOREGOING, EACH PURCHASER HEREBY AGREES THAT THE COLLATERAL AGENT SHALL EXERCISE ALL RIGHTS AND REMEDIES UNDER THE FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT ON BEHALF OF SUCH PURCHASER AND IN THE EVENT OF AN INCONSISTENCY BETWEEN THIS AGREEMENT AND THE TERMS OF THE FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT, THE TERMS OF THE FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT SHALL GOVERN. THE FOREGOING PROVISIONS ARE INTENDED AS AN INDUCEMENT TO THE PURCHASERS UNDER THE SECOND LIEN NOTE PURCHASE AGREEMENT TO PURCHASE NOTES PURSUANT THERETO AND SUCH PURCHASERS ARE THE INTENDED THIRD PARTY BENEFICIARIES OF SUCH PROVISIONS AND THE PROVISIONS OF THE FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT.

ARTICLE X

MISCELLANEOUS

Section 10.1 Notices.

(a) Written Notices.

(i) Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications to any party herein to be effective shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

To the Issuer:	BioScrip, Inc. 1600 Broadway, Suite 700 Denver, CO 80202 Attn: Stephen Deitsch, Senior Vice President, Chief Financial Officer & Treasurer Telecopy Number: (720) 468-4040
With a copy to (for Information purposes only):	Dechert LLP 1095 Avenue of the Americas New York, New York 10036 Attention: Scott M. Zimmerman Telecopy Number: (212) 698-3599
To the Collateral Agent:	Wells Fargo Bank, National Association 9062 Old Annapolis Road Columbia, Maryland 21045 Attention: Jason Prisco – BioScrip, Inc. First Lien NPA Email: CTSBankDebtAdministrationTeam@wellsfargo.com
To any other Purchaser:	the address set forth on the applicable signature page hereto

Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All such notices and other communications shall be effective upon actual receipt by the relevant Person or, if delivered by overnight courier service, upon the first Business Day after the date deposited with such courier service for overnight (next-day) delivery or, if sent by telecopy, upon transmittal in legible form by facsimile machine or, if mailed, upon the third Business Day after the date deposited into the mail or, if delivered by hand, upon delivery; provided that notices delivered to the Collateral Agent or any Purchaser shall not be effective until actually received by such Person at its address specified in this Section.

(ii) Any agreement of the Collateral Agent or any Purchaser herein to receive certain notices by telephone or facsimile is solely for the convenience and at the request of the Issuer. The Collateral Agent and each Purchaser shall be entitled to rely on the authority of any Person purporting to be a Person authorized by the Issuer to give such notice and the Collateral Agent and the Purchasers shall not have any liability to the Issuer or other Person on account of any action taken or not taken by the Collateral Agent or any Purchaser in reliance upon such telephonic or facsimile notice. The obligation of the Issuer to repay the Notes and all other Obligations hereunder shall not be affected in any way or to any extent by any failure of the Collateral Agent or any Purchaser to receive written confirmation of any telephonic or facsimile notice or the receipt by the Collateral Agent or any Purchaser of a confirmation which is at variance with the terms understood by the Collateral Agent and such Purchaser to be contained in any such telephonic or facsimile notice.

(b) Electronic Communications.

(i) Notices and other communications to the Collateral Agent and each Purchaser hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by such Person. The Issuer may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(ii) Unless the Collateral Agent or any Purchaser otherwise prescribes, (i) notices and other communications sent to an e-mail address of such Person shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); 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.

Section 10.2 Waiver; Amendments.

(a) No failure or delay by the Collateral Agent or any Purchaser in exercising any right or power hereunder or under any other Note Document, and no course of dealing between the Issuer and the Collateral Agent or any Purchaser**,** 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 right or power, preclude any other or further exercise thereof or the exercise of any other right or power hereunder or thereunder. The rights and remedies of the Collateral Agent and the Purchasers hereunder and under the other Note Documents are cumulative and are not exclusive of any rights or remedies provided by law. No waiver of any provision of this Agreement or of any other Note Document or consent to any departure by the Issuer or any other Note Party therefrom shall in any event be effective unless the same shall be permitted by clause (b) of this Section, 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 purchase of a Note shall not be construed as a waiver of any Default or Event of Default, regardless of whether the Collateral Agent or any Purchaser may have had notice or knowledge of such Default or Event of Default at the time.

(b) No amendment or waiver of any provision of this Agreement or of the other Note Documents (other than the Fee Letters), nor consent to any departure by the Issuer or any other Note Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Issuer and the Required Purchasers, or the Issuer and the Collateral Agent with the consent of the Required Purchasers, and then such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that, in addition to the consent of the Required Purchasers, no amendment, waiver or consent shall:

(i) increase the Commitment of any Purchaser without the written consent of such Purchaser;

(ii) reduce the principal amount of any Note or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Purchaser affected thereby (except that any waiver of post-default rates of interests shall not constitute a reduction in the rate of interest or fees for purposes of this clause (ii));

(iii) postpone or extend the date fixed for any payment of any principal of, or interest on, any Note or any fees hereunder or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date for the termination or reduction of any Commitment, without the written consent of each Purchaser affected thereby (it being understood that a waiver of any condition precedent or the waiver of any Default, Event of Default or mandatory prepayment shall not constitute a postponement, extension or increase of any Note or Commitment hereunder);

(iv) change Section 8.2 without the written consent of each Purchaser affected thereby;

(v) change Section 2.18 in a manner that would alter the *pro rata* sharing of payments required thereby, without the written consent of each Purchaser;

(vi) change any of the provisions of this clause (b) or the definition of "Required Purchasers" or any other provision hereof specifying the number or percentage of Purchasers which are required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the consent of each Purchaser;

(vii) except in connection with a transaction otherwise not prohibited by this Agreement or any other Note Document, release all or substantially all of the value of any Guarantee guarantying any of the Obligations, or release all or substantially all of the guarantors, or limit the liability of such guarantors, under any guaranty agreement guaranteeing any of the Obligations, in each case, without the written consent of each Purchaser; or

(viii) release all or substantially all of the Collateral securing the Obligations, without the written consent of each Purchaser;

provided, further, that no such amendment, waiver or consent shall amend, modify or otherwise affect the rights, duties or obligations of the Collateral Agent without the prior written consent of the Collateral Agent.

Notwithstanding anything to the contrary herein, no Defaulting Purchaser shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Purchaser may not be increased or extended, and amounts payable to such Purchaser hereunder may not be permanently reduced, without the consent of such Purchaser (other than reductions in fees and interest in which such reduction does not disproportionately affect such Purchaser).

Section 10.3 Expenses; Indemnification.

(a) The Issuer shall pay (i) the expenses required to be reimbursed pursuant to the Commitment Letter, (ii) all fees agreed to from time to time between the Issuer and the Collateral Agent and the reasonable and documented costs and expenses of the Collateral Agent and its Affiliates in connection with the preparation and administration of the Note Documents and all reasonable and documented costs and expenses of the Collateral Agent, the Purchasers and their respective Affiliates in connection with any amendments, modifications or waivers thereof (whether or not the transactions contemplated in this Agreement or any other Note Document shall be consummated), and the due diligence relating thereto (including the reasonable and documented fees, disbursements, and expenses of one outside counsel to the Collateral Agent and one outside counsel to each Purchaser (and any required special or local counsel)), and (iii) all documented costs and expenses incurred by the Collateral Agent or any Purchaser (including the documented fees, disbursements, and expenses of one outside counsel to each such party (and any required special or local counsel to each such party)) in connection with the enforcement or protection of its rights, and the discharge of its duties, in connection with the Note Documents, including its rights under this Section, or in connection with the Notes purchased hereunder, including all such documented costs and expenses incurred during any workout, restructuring or negotiations in respect of such Notes.

(b) The Issuer shall indemnify the Collateral Agent and each Purchaser, and each Related Party of any of the foregoing Persons (each such Person and Related Party being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and expenses (including the fees, disbursements, and expenses of any counsel for any Indemnitee), and shall reimburse each Indemnitee upon demand for any legal or other expenses incurred in connection with investigating or defending any of the following, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Issuer or any other Note Party or any of their Subsidiaries or Affiliates arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Note Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Note or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by the Issuer or any of its Subsidiaries, or any Environmental Liability related in any way to the Issuer or any of its Subsidiaries, or (iv) any actual or prospective suit, claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Issuer or any other Note Party or by the Issuer's equity holders, Affiliates or creditors, and regardless of whether any Indemnitee or the Issuer 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 other expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from (A) the gross negligence or willful misconduct of such Indemnitee or (B) other than with respect to the Collateral Agent and its Related Parties, a material breach by such Indemnitee of any of its undertakings, obligations or commitments under this Agreement or any other Note Documents (except that, regardless of its action or inaction, the Collateral Agent shall have no liability in connection with (iii) above). No Indemnitee shall be responsible or liable for any damages arising from the use by others of any information or other materials obtained through Syndtrak, Intralinks, any other Internet or intranet website, or any other electronic, telecommunications or other information transmission systems, except to the extent that such damages are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from (A) the gross negligence or willful misconduct of such Indemnitee or (B) other than with respect to the Collateral Agent and its Related Parties, a material breach by such Indemnitee of any of its undertakings, obligations or commitments under this Agreement or any other Note Documents.

(c) This Section 10.3 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, liabilities and related expenses arising from any non-Tax claim.

(d) To the extent that the Issuer fails to pay any amount required to be paid to the Collateral Agent under clause (a), (b) or (c) hereof, each Purchaser severally agrees to pay to the Collateral Agent such Purchaser's *pro rata* share (in accordance with the aggregate outstanding principal amount of the Note(s) held by it determined as of the time that the unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified payment, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Collateral Agent in its capacity as such. Additionally, each Purchaser shall not assert any claim against the Collateral Agent on any theory of liability for special, consequential, exemplary or punitive damages arising out of or in connection with any Note Document.

(e) To the extent permitted by applicable law, the Issuer shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to actual or direct damages) arising out of, in connection with or as a result of this Agreement, any other Note Document or any agreement or instrument contemplated hereby, the transactions contemplated therein, any Note or the use of proceeds thereof.

(f) All amounts due under this Section shall be payable promptly after written demand therefor.

Section 10.4 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, except that the Issuer may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Collateral Agent and each Purchaser, and no Purchaser may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of clause (b) of this Section, (ii) by way of participation in accordance with the provisions of clause (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of clause (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in clause (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Collateral Agent and the Purchasers) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Purchaser may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and Notes at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Purchaser's Commitments and Notes at the time owing to it or in the case of an assignment to a Purchaser, an Affiliate of a Purchaser or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in clause (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Notes outstanding thereunder) or, if the applicable Commitment is not then in effect, the outstanding principal balance of the Notes of the assigning Purchaser subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Issuer or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than $1,000,000 and in minimum increments of $1,000,000, unless, so long as no Event of Default has occurred and is continuing, the Issuer otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Purchaser's rights and obligations under this Agreement with respect to the Notes or the Commitments assigned.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by clause (b)(i)(B) of this Section and, in addition:

(A) the consent of the Issuer (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to a Purchaser, an Affiliate of such Purchaser or an Approved Fund of such Purchaser; provided, that the Issuer shall be deemed to have consented to any such assignment unless it objects thereto by written notice to the assigning Purchaser within five (5) Business Days after having received notice thereof; provided, further, that any refusal by the Issuer to consent to an assignment to a Disqualified Institution shall not be deemed unreasonable.

(iv) Assignment and Assumption. The parties to each assignment shall deliver to the Issuer (A) a duly executed Assignment and Assumption, together with any Note subject to such assignment, (B) unless the assignee is already a Purchaser, a designation of one or more contacts to whom all Note information (which may contain material non-public information about the Issuer and its Subsidiaries and their Related Parties or their securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable law, Federal, state and foreign securities laws and (C) the documents required under Section 2.17(f), and the Issuer shall record such assignment in the Register.

(v) No Assignment to the certain Persons. No such assignment shall be made to (A) the Issuer or any of the Issuer's Affiliates or Subsidiaries, (B) any Defaulting Purchaser or any of its Subsidiaries, or any Person who, upon becoming a Purchaser hereunder, would constitute any of the foregoing Persons described in this clause (B), (C) so long as no Event of Default is in existence, any Disqualified Institution or (D) any Person (other than an existing Purchaser or an Affiliate or Approved Fund of an existing Purchaser) that is not an "accredited investor" (as defined in Regulation D of the Securities Act).

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

Subject to acceptance and recording thereof by the Issuer pursuant to clause (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Purchaser under this Agreement, and the assigning Purchaser thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Purchaser's rights and obligations under this Agreement, such Purchaser shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 10.3 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that, except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Purchaser will constitute a waiver or release of any claim of any party hereunder arising from such Purchaser's having been a Defaulting Purchaser. Any assignment or transfer by a Purchaser of rights or obligations under this Agreement that does not comply with this clause shall be treated for purposes of this Agreement as a sale by such Purchaser of a participation in such rights and obligations in accordance with clause (d) of this Section. If the consent of the Issuer to an assignment is required hereunder (including a consent to an assignment which does not meet the minimum assignment thresholds specified above), the Issuer shall be deemed to have given its consent unless it shall object thereto by written notice to assigning Purchaser within five (5) Business Days after notice thereof has actually been delivered by the assigning Purchaser to the Issuer.

(c) The Issuer shall maintain at one of its offices in Denver, CO a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Purchasers, and the Commitments of, and principal and interest amount of the Notes owing to, each Purchaser pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Issuer, the Collateral Agent and the Purchasers shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Purchaser hereunder for all purposes of this Agreement. Information contained in the Register with respect to any Purchaser shall be available for inspection by such Purchaser at any reasonable time and from time to time upon reasonable prior notice. The Collateral Agent shall have the right, at any time, to request a copy of the Register.

(d) Any Purchaser may at any time, without the consent of, or notice to, the Issuer, sell participations to any Person (other than a natural person, the Issuer, any of the Issuer's Affiliates or Subsidiaries, or any Competitor) (each, a "Participant") in all or a portion of such Purchaser's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Notes owing to it); provided that (i) such Purchaser's obligations under this Agreement shall remain unchanged, (ii) such Purchaser shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Issuer, the Collateral Agent and the other Purchasers shall continue to deal solely and directly with such Purchaser in connection with such Purchaser's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Purchaser sells such a participation shall provide that such Purchaser shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Purchaser will not, without the consent of the Participant, agree to any amendment, modification or waiver with respect to the following to the extent affecting such Participant: (i) increase the Commitment of such Purchaser; (ii) reduce the principal amount of any Note or reduce the rate of interest thereon, or reduce any fees payable hereunder; (iii) postpone the date fixed for any payment of any principal of, or interest on, any Note or any fees hereunder or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date for the termination or reduction of any Commitment; (iv) change Section 2.18 in a manner that would alter the *pro rata* sharing of payments required thereby; (v) change any of the provisions of Section 10.2(b) or the definition of "Required Purchasers" or any other provision hereof specifying the number or percentage of Purchasers which are required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder; (vi) release all or substantially all of the guarantors, or limit the liability of such guarantors, under any guaranty agreement guaranteeing any of the Obligations; or (vii) release all or substantially all collateral (if any) securing any of the Obligations. Subject to clause (e) of this Section, the Issuer agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16, and 2.17 to the same extent as if it were a Purchaser and had acquired its interest by assignment pursuant to clause (b) of this Section; provided that such Participant agrees to be subject to Section 2.19 as though it were a Purchaser. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.7 as though it were a Purchaser; provided that such Participant agrees to be subject to Section 2.18 as though it were a Purchaser.

Each Purchaser that sells a participation shall, acting solely for this purpose as an agent of the Issuer, maintain a register in the United States on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Notes or other obligations under the Note Documents (the "Participant Register"). The entries in the Participant Register shall be conclusive, absent manifest error, and such Purchaser shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. The Issuer shall have inspection rights to such Participant Register (upon reasonable prior notice to the applicable Purchaser) solely for purposes of demonstrating that such Notes or other obligations under the Note Documents are in "registered form" for purposes of the Code.

(e) A Participant shall not be entitled to receive any greater payment under Sections 2.15 and 2.17 than the applicable Purchaser 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 Issuer's prior written consent. A Participant shall not be entitled to the benefits of Section 2.17 unless the Issuer is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Issuer, to comply with Section 2.17(e) and (f) as though it were a Purchaser.

(f) Any Purchaser 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 Purchaser, including, without limitation, any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Purchaser from any of its obligations hereunder or substitute any such pledgee or assignee for such Purchaser as a party hereto.

Section 10.5 Governing Law; Jurisdiction; Consent to Service of Process.

(a) This Agreement and the other Note Documents and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Note Document (except, as to any other Note Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be construed in accordance with and be governed by the law of the State of New York.

(b) The Issuer hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court for the Southern District of New York, and of the Supreme Court of the State of New York sitting in New York county, and of any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Note Document or the transactions contemplated hereby or thereby, 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 District Court or New York state court or, to the extent permitted by applicable law, such appellate 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 Note Document shall affect any right that the Collateral Agent or any Purchaser may otherwise have to bring any action or proceeding relating to this Agreement or any other Note Document against the Issuer or its properties in the courts of any jurisdiction.

(c) The Issuer irrevocably and unconditionally waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding described in clause (b) of this Section and brought in any court referred to in clause (b) of this Section. Each of the parties hereto irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to the service of process in the manner provided for notices in Section 10.1. Nothing in this Agreement or in any other Note Document will affect the right of any party hereto to serve process in any other manner permitted by law.

Section 10.6 WAIVER OF JURY TRIAL. EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF THIS AGREEMENT OR ANY OTHER NOTE DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER 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 AND THE OTHER NOTE DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.7 Right of Set-off. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, each Purchaser shall have the right, at any time or from time to time upon the occurrence and during the continuance of an Event of Default, without prior notice to the Issuer, any such notice being expressly waived by the Issuer to the extent permitted by applicable law, to set off and apply against all deposits (general or special, time or demand, provisional or final) of the Issuer at any time held or other obligations at any time owing by such Purchaser to or for the credit or the account of the Issuer against any and all Obligations held by such Purchaser, irrespective of whether such Purchaser shall have made demand hereunder and although such Obligations may be unmatured; provided that in the event that any Defaulting Purchaser shall exercise any such right of setoff, (x) all amounts so set off shall be applied in accordance with the provisions of Section 2.21(a) and, pending such application, shall be segregated by such Defaulting Purchaser from its other funds and deemed held in trust for the benefit of the applicable recipients, and (y) the Defaulting Purchaser shall provide promptly to the Collateral Agent and the other Purchasers a statement describing in reasonable detail the Obligations owing to such Defaulting Purchaser as to which it exercised such right of setoff. Each Purchaser agrees promptly to notify the Issuer after any such set-off and any application made by such Purchaser; provided that the failure to give such notice shall not affect the validity of such set-off and application. Each Purchaser agrees to apply all amounts collected from any such set-off to the Obligations before applying such amounts to any other Indebtedness or other obligations owed by the Issuer and any of its Subsidiaries to such Purchaser.

Section 10.8 Counterparts; Integration. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Agreement, the Fee Letters, the other Note Documents, and any separate letter agreements relating to any fees payable to the Collateral Agent and its Affiliates constitute the entire agreement among the parties hereto and thereto and their affiliates regarding the subject matters hereof and thereof and supersede all prior agreements and understandings, oral or written, regarding such subject matters. Delivery of an executed counterpart to this Agreement or any other Note Document by facsimile transmission or by electronic mail in pdf format shall be as effective as delivery of a manually executed counterpart hereof.

Section 10.9 **Survival.** All covenants, agreements, representations and warranties made by the Issuer herein and in the certificates, reports, notices or other instruments delivered in connection with or pursuant to 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 and the other Note Documents and the issuance and purchase of any Notes, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Collateral Agent or any Purchaser 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 the principal of or any accrued interest on any Note or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Commitments have not expired or terminated. The provisions of Sections 2.15, 2.16, 2.17, and 10.3 and Article IX shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Notes, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof.

Section 10.10 **Severability.** Any provision of this Agreement or any other Note Document held to be illegal, invalid or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity or unenforceability without affecting the legality, validity or enforceability of the remaining provisions hereof or thereof; and the illegality, invalidity or unenforceability of a particular provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.11 **Confidentiality.** Each of the Collateral Agent and the Purchasers agrees to take normal and reasonable precautions to maintain the confidentiality of any information relating to the Issuer or any of its Subsidiaries or any of their respective businesses, to the extent designated in writing as confidential and provided to it by the Issuer or any of its Subsidiaries, other than any such information that is available to the Collateral Agent or any Purchaser on a non-confidential basis prior to disclosure by the Issuer or any of its Subsidiaries, except that such information may be disclosed (i) to any Related Party of the Collateral Agent or any such Purchaser including, without limitation, accountants, legal counsel and other advisors (and to other persons authorized by the Collateral Agent or a Purchaser to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.11), (ii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (iii) to the extent requested by any regulatory agency or authority purporting to have jurisdiction over it (including any self-regulatory authority such as the National Association of Insurance Commissioners), (iv) to the extent that such information becomes publicly available other than as a result of a breach of this Section, or which becomes available to the Collateral Agent, any Purchaser or any Related Party of any of the foregoing on a non-confidential basis from a source other than the Issuer or any of its Subsidiaries, (v) in connection with the exercise of any remedy hereunder or under any other Note Documents or any suit, action or proceeding relating to this Agreement or any other Note Documents or the enforcement of rights hereunder or thereunder, (vi) subject to execution by such Person of an agreement containing provisions substantially the same as those of this Section, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, or (B) any actual or prospective party (or its Related Parties) to any swap or derivative or other transaction under which payments are to be made by reference to the Issuer and its obligations, this Agreement or payments hereunder, (vii) to any rating agency, (viii) to the CUSIP Service Bureau or any similar organization, (ix) to any Purchaser's financing sources; provided that, prior to any disclosure, such financing source is informed of the confidential nature of such information, or (x) with the consent of the Issuer. Any Person required to maintain the confidentiality of any information as provided for in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such information as such Person would accord its own confidential information. Furthermore, the Note Parties and the Purchasers shall not, without the prior written consent of the applicable Purchaser, in each instance, (a) use in advertising, publicity, or otherwise the name of such Purchaser or any of its Affiliates, or any partner or employee of such Purchaser or any of its Affiliates, or (b) represent that any product or any service provided has been approved or endorsed by any Purchaser, or any of its Affiliates. In the event of any conflict between the terms of this Section and those of any other Contractual Obligation entered into with any Note Party (whether or not a Note Document), the terms of this Section shall govern.

Section 10.12 **Interest Rate Limitation.** Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Note, together with all fees, charges and other amounts which may be treated as interest on such Note under applicable law (collectively, the "Charges"), shall exceed the maximum lawful rate of interest (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by a Purchaser holding such Note in accordance with applicable law, the rate of interest payable in respect of such Note 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 Note but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Purchaser in respect of other Notes or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Rate to the date of repayment (to the extent permitted by applicable law), shall have been received by such Purchaser.

Section 10.13 **Waiver of Effect of Corporate Seal.** The Issuer represents and warrants that neither it nor any other Note Party is required to affix its corporate seal to this Agreement or any other Note Document pursuant to any Requirement of Law, agrees that this Agreement is delivered by the Issuer under seal and waives any shortening of the statute of limitations that may result from not affixing the corporate seal to this Agreement or such other Note Documents.

Section 10.14 **Patriot Act.** The Collateral Agent and each Purchaser hereby notifies the Note Parties that, pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Note Party, which information includes the name and address of such Note Party and other information that will allow such Purchaser or the Collateral Agent, as applicable, to identify such Note Party in accordance with the Patriot Act. The Note Parties agree to cooperate with the Collateral Agent and each Purchaser and provide the information required in this Section.

Section 10.15 No Advisory or Fiduciary Responsibility.

(a) In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Note Document), the Issuer and each other Note Party acknowledges and agrees and acknowledges its Affiliates' understanding that (i) (A) the services regarding this Agreement provided by the Collateral Agent and/or the Purchasers are arm's-length commercial transactions between the Issuer, each other Note Party and their respective Affiliates, on the one hand, and the Collateral Agent and the Purchasers, on the other hand, (B) each of the Issuer and the other Note Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate, and (C) the Issuer and each other Note Party is capable of evaluating and understanding, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Note Documents; (ii) (A) each of the Collateral Agent and the Purchasers is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Issuer, any other Note Party or any of their respective Affiliates, or any other Person, and (B) neither the Collateral Agent nor any Purchaser has any obligation to the Issuer, any other Note Party or any of their Affiliates with respect to the transaction contemplated hereby except those obligations expressly set forth herein and in the other Note Documents; and (iii) the Collateral Agent, the Purchasers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Issuer, the other Note Parties and their respective Affiliates, and each of the Collateral Agent and the Purchasers has no obligation to disclose any of such interests to the Issuer, any other Note Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Issuer and the other Note Parties hereby waives and releases any claims that it may have against the Collateral Agent or any Purchaser with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

(b) The Issuer agrees that the relationship between the Collateral Agent and the Issuer and between each Purchaser and the Issuer is that of creditor and debtor and not that of partners or joint venturers. This Agreement does not constitute a partnership agreement or any other association between the Collateral Agent and the Issuer or between any Purchaser and the Issuer. The Issuer acknowledges that each Purchaser has acted at all times only as a creditor to the Issuer within the normal and usual scope of the activities normally undertaken by a creditor and in no event has the Collateral Agent or any Purchaser attempted to exercise any control over the Issuer or its business or affairs. The Issuer further acknowledges that the Collateral Agent and each Purchaser has not taken or failed to take any action under or in connection with its respective rights under this Agreement or any of the other Note Documents that in any way, or to any extent, has interfered with or adversely affected the Issuer's ownership of Collateral.

Section 10.16 First Lien/Second Lien Intercreditor Agreement. Notwithstanding anything herein to the contrary, the lien and security interest granted to Collateral Agent or any other Secured Parties pursuant to or in connection with the Note Documents and the exercise of any right or remedy by thereby or thereunder are subject to the provisions of the First Lien/Second Lien Intercreditor Agreement. In the event of any conflict between the terms of the First Lien/Second Lien Intercreditor Agreement and this Agreement, the terms of the First Lien/Second Lien Intercreditor Agreement shall govern and control. Notwithstanding the foregoing, each Note Party expressly acknowledges and agrees that the First Lien/Second Lien Intercreditor Agreement is solely for the benefit of the parties thereto, and that notwithstanding the fact that the exercise of certain of Collateral Agent's and the Purchasers' rights under this Agreement or any other Note Document may be subject to the First Lien/Second Lien Intercreditor Agreement, no action taken or not taken by Collateral Agent or any other Purchaser in accordance with the terms of the First Lien/Second Lien Intercreditor Agreement shall constitute, or be deemed to constitute, a waiver by Collateral Agent or any other Purchaser of any rights such Person has with respect to any Note Party under this Agreement or any other Note Document.

Section 10.17 Captions. Captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

Section 10.18 **Acknowledgement and Consent to Bail-In of EEA Financial Institutions.** Notwithstanding anything to the contrary in any Note Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Note Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Note Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

Section 10.19 **Force Majeure**. In no event shall the Collateral Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Collateral Agent shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances..

(remainder of page left intentionally 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.

BIOSCRIP, INC.

By: /s/ Stephen Deitsch
Name: Stephen Dietsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

[Signature Page to First Lien Note Purchase Agreement]

WELLS FARGO BANK, NATIONAL ASSOCIATION
as the Collateral Agent

By: /s/ Michael Pinzon
Name: Michael Pinzon
Title: Vice President

Address for Notices:

Wells Fargo Bank, National Association
9062 Old Annapolis Road
Columbia, Maryland 21045
Attention: Jason Prisco – BioScrip, Inc. First Lien NPA
Email: CRSBankDebtAdministrationTeam@wellsfargo.com

ASSF IV AIV B HOLDINGS II, L.P.
as a Purchaser

By: ASSF IV AIV B Holdings GP LLC, its general partner

By: ASSF IV AIV B, L.P., its sole member

By: ASSF Management IV, L.P., its general partner

By: ASSF Management IV GP LLC, its general partner

By: /s/ Scott L. Graves
Name: Scott L. Graves
Title: Authorized Signatory

Address for Notices:

c/o Ares Management LLC
2000 Avenue of the Stars, 12th Floor
Los Angeles, CA 90067

Funding Office:

c/o Ares Management LLC
2000 Avenue of the Stars, 12th Floor
Los Angeles, CA 90067

J.P. MORGAN SECURITIES LLC
as a Purchaser

By: /s/ Jeffrey L. Panzo
Name: Jeffrey L. Panzo
Title: Attorney in fact

Address for Notices:

J.P. Morgan Securities LLC
4 New York Plaza, 15th Floor, Mail Code NY1-E054
New York, New York 10004
Attention: Jeffrey L. Panzo
Email: Jeffrey.L.Panzo@JPMorgan.com
Phone No.: (212) 499-1435

Funding Office:

JPMorgan Chase Bank, N.A.
4 New York Plaza, 15th Floor
New York, New York 10004

GOLDMAN SACHS & CO. LLC
as a Purchaser

By: /s/ Daniel Oneglia
Name: Daniel Oneglia
Title: Managing Director

Address for Notices:

Goldman Sachs & Co. LLC
200 West Street, 26th Floor
Attn: Paul Burningham
New York, New York 10282

Funding Office:

Goldman Sachs & Co. LLC
200 West Street, 26th Floor
Attn: Paul Burningham and Paige Cataruozolo
New York, New York 10282
Email: ficc-amssg-mo@gs.com
Phone No.: (917) 343-8393 (Paul Burningham), (917) 343-3096 (Paige Cataruozolo)

VERIZON INVESTMENT MANAGEMENT CORPORATION - DOMESTIC FIXED INCOME
WESTERN ASSET OPPORTUNISTIC US$ HIGH YIELD SECURITIES PORTFOLIO, LLC
STICHTING PENSIOENFONDS DSM NETHERLAND
WESTERN ASSET HIGH YIELD FUND
CGCM HIGH YIELD INVESTMENTS
WESTERN ASSET FLOATING RATE HIGH INCOME FUND, LLC
LEGG MASON WESTERN ASSET US HIGH YIELD FUND
EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF HAWAII
KERN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
WESTERN ASSET HIGH INCOME OPPORTUNITY FUND INC.
WESTERN ASSET MANAGEMENT STRATEGIC BOND OPPORTUNITIES PORTFOLIO
WESTERN ASSET GLOBAL HIGH YIELD BOND FUND
LEGG MASON WESTERN ASSET GLOBAL HIGH YIELD BOND FUND
WESTERN ASSET GLOBAL HIGH INCOME FUND, INC.
WESTERN ASSET HIGH INCOME FUND II, INC.
LEGG MASON PARTNERS VARIABLE INCOME TRUST
WESTERN ASSET SHORT DURATION HIGH INCOME FUND
WESTERN ASSET CORPORATE BOND FUND
WESTERN ASSET GLOBAL STRATEGIC INCOME FUND
BAYER CORPORATION MASTER TRUST
WESTERN ASSET STRATEGIC US$ HIGH YIELD PORTFOLIO, LLC
WESTERN ASSET INVESTMENT GRADE DEFINED OPPORTUNITY TRUST INC.

WA HIGH INCOME CORPORATE BOND (MULTI-CURRENCY) FUND
WESTERN ASSET HIGH YIELD DEFINED OPPORTUNITY FUND INC
WESTERN ASSET MULTI-ASSET CREDIT PORTFOLIO MASTER FUND, LTD.
RUSSELL LONG DURATION FIXED INCOME FUND
WESTERN ASSET US BANK LOAN (MULTI-CURRENCY) FUND
WESTERN ASSET BANK LOAN (OFFSHORE) FUND
1199 SEIU HEALTH CARE EMPLOYEES PENSION FUND
WILLIAM BARRON HILTON CHARITABLE REMAINDER UNITRUST
2006 BARRON HILTON CHARITABLE REMAINDER UNITRUST
each as a Purchaser

By: Western Asset Management Company, as its Investment Manager and Agent

By: /s/ Adam Wright
Name: Adam Wright
Title: Manager, U.S. Legal Affairs

Address for Notices:

Western Asset Management Company
385 East Colorado Boulevard
Pasadena, California 91101
Attention: Legal Department

Funding Office:

Western Asset Management Company
385 East Colorado Boulevard
Pasadena, California 91101

SCHEDULE II

Competitors

CVS/Coram
OptionCare
Axelacare/UHC

Exhibit 10.2

EXECUTION VERSION

FIRST LIEN GUARANTY AND SECURITY AGREEMENT

dated as of June June 29, 2017

made by

BIOSCRIP, INC.
as Issuer

and

THE OTHER GRANTORS FROM TIME TO TIME PARTY HERETO

in favor of

WELLS FARGO BANK, NATIONAL ASSOCIATION
as Collateral Agent

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FIRST LIEN GUARANTY AND SECURITY AGREEMENT

THIS FIRST LIEN GUARANTY AND SECURITY AGREEMENT, dated as of June 29, 2017, is made by BIOSCRIP, INC., a Delaware corporation (the "Issuer"), and certain Subsidiaries of the Issuer identified on the signature pages hereto as "Guarantors" (together with the Issuer and any other Subsidiary of the Issuer that becomes a party hereto from time to time after the date hereof, each, a "Grantor" and, collectively, the "Grantors"), in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, as collateral agent (in such capacity, together with its successors and assigns, the "Collateral Agent") for itself and the other Secured Parties (as defined below).

WHEREAS, the Issuer is entering into that certain First Lien Note Purchase Agreement dated as of the date hereof (as amended, restated, supplemented, or otherwise modified from time to time, the "Note Purchase Agreement") by and among the Issuer, the purchasers from time to time party thereto (collectively, the "Purchasers") and the Collateral Agent, providing for, among other things, the issuance by the Issuer and the purchase by the Purchasers of the Notes, subject to the terms set forth therein; and

WHEREAS, it is a condition precedent to the obligations of the Purchasers and the Collateral Agent under the Note Documents that the Grantors enter into this Agreement, pursuant to which, subject to the terms and conditions herein, the Grantors (other than the Issuer) shall guaranty all Obligations of the Issuer and the Grantors (including the Issuer) shall grant first-priority Liens on substantially all of their personal property to the Collateral Agent, on behalf of the Secured Parties, to secure the Grantors' respective Obligations.

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent and the Purchasers to enter into the Note Purchase Agreement and to induce the Purchasers to purchase the Notes pursuant thereto, each Grantor hereby agrees with the Collateral Agent, for the ratable benefit of the Secured Parties, as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions.

(a) Each term defined above shall have the meaning set forth above for all purposes of this Agreement. Unless otherwise defined herein, terms defined in the Note Purchase Agreement and used herein shall have the meanings assigned to such terms in the Note Purchase Agreement, and the terms "Account Debtor", "Account", "Cash Proceeds", "Certificated Security", "Chattel Paper", "Commercial Tort Claim", "Deposit Account", "Document", "Electronic Chattel Paper", "Equipment", "Fixture", "General Intangible", "Goods", "Instrument", "Inventory", "Investment Property", "Letter-of-Credit Right", "Noncash Proceeds", "Payment Intangible", "Proceeds", "Securities Account", "Security", "Security Entitlement", "Software", "Supporting Obligations", and "Tangible Chattel Paper" shall have the meanings assigned to such terms in the UCC as in effect in the State of New York on the date hereof:

(b) The following terms shall have the following meanings:

"Agreement" shall mean this First Lien Guaranty and Security Agreement, as amended, restated, supplemented or otherwise modified from time to time.

"Avoidance Provisions" shall have the meaning set forth in Section 2.1(d).

"Bankruptcy Code" shall have the meaning set forth in Section 2.1(c)(i).

"Collateral" shall have the meaning set forth in Section 3.1.

"Copyright Licenses" shall mean any and all present and future agreements with respect to which a Grantor is a party providing for the granting of any right in or to Copyrights (whether the applicable Grantor is licensee or licensor thereunder).

"Copyrights" shall mean, collectively, with respect to each Grantor, all copyrights, whether registered or unregistered, owned by or assigned to such Grantor and all registrations and applications for the foregoing (whether by statutory or common law, whether established or registered in the United States, any State thereof, or any other country or any political subdivision thereof and, in each case, whether owned by or assigned to such Grantor), together with any and all (i) rights and privileges arising under applicable law with respect to such Grantor's use of any copyrights, (ii) extensions and renewals thereof and amendments thereto, (iii) 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, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present or future infringements thereof. As of the Closing Date, all Copyright registrations and applications of the Grantors are set forth on Schedule 9.

"Excluded Capital Stock" shall mean (i) any Capital Stock or Stock Equivalent of any Subsidiary of any Grantor that is not a wholly owned Subsidiary of such Grantor and of any joint venture, in each case, to the extent a pledge thereof is not permitted by the terms of such Person's organizational documents or joint venture documents (provided that such Grantor shall use commercially reasonable efforts to ensure that such organizational documents or joint venture documents permit a pledge of such Capital Stock or Stock Equivalent) and (ii) any Capital Stock of any Foreign Subsidiary owned by any Grantor in excess of 65% of the issued and outstanding voting Capital Stock of such Foreign Subsidiary; provided, that "Excluded Capital Stock" shall not include any proceeds, products, substitutions or replacements of Excluded Capital Stock (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Capital Stock).

"Excluded Property" shall mean (i) any fee-owned Real Estate with a fair market value of less than $2,500,000 (as of the date of the acquisition of such Real Estate) (provided that the fair market value of all fee-owned Real Estate constituting Excluded Property shall not exceed $5,000,000) and all Real Estate constituting leasehold interests; (ii) any motor vehicles and other assets subject to certificates of title to the extent that a security interest therein cannot be perfected by the filing of a UCC financing statement; (iii) any Letter-of-Credit Rights (except to the extent constituting a support obligation for other Collateral as to which the perfection of security interests in such other Collateral and the support obligation is accomplished solely by the filing of a UCC financing statement) and Commercial Tort Claims, in each case, with a value of less than $1,000,000; (iv) Excluded Capital Stock; (v) any license, Instrument, agreement or other General Intangible (other than Proceeds and Accounts thereof) to the extent, and so long as, the pledge thereof as Collateral would violate the terms thereof or result in a breach by any Grantor of any agreement related thereto, but only to the extent, and only for so long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the UCC, the Bankruptcy Code or any other Requirement of Law and such prohibition is not prohibited under Section 7.8 of the Note Purchase Agreement (provided, that such assets shall cease to be Excluded Property at such time as such prohibition or restriction is terminated, rendered unenforceable, or deemed ineffective or otherwise ceases to be in effect and, upon such prohibition or restriction being terminated, rendered unenforceable, deemed ineffective or otherwise ceasing to be in effect, the Lien granted herein shall be deemed to have automatically attached to such assets); (vi) Excluded Accounts; (vii) any United States intent-to-use trademark applications for which an amendment to allege use or statement of use has not been filed under 15 U.S.C. § 1051(c) or 15 U.S.C. § 1051(d), respectively, or if filed, has not been deemed in conformance with 15 U.S.C. § 1051(a) or examined and accepted, respectively, by the United States Patent and Trademark Office (provide that, upon such filing and acceptance, such intent-to-use applications shall cease to be Excluded Property); (viii) any other assets to the extent the pledge thereof is prohibited by any Requirement of Law (other than Proceeds and Accounts thereof), but only to the extent, and for so long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the UCC, the Bankruptcy Code or any other Requirement of Law (provided, that such assets shall cease to be Excluded Property at such time as such prohibition is terminated, rendered unenforceable, or deemed ineffective or otherwise ceases to be in effect and, upon such prohibition being terminated, rendered unenforceable, deemed ineffective or otherwise ceasing to be in effect, the Lien granted herein shall be deemed to have automatically attached to such assets); (ix) those assets of the Grantors as to which the Collateral Agent (at the direction of the Required Purchasers) shall reasonably determine that the costs of obtaining or perfecting such security interest are excessive in relation to the value of the security to the Secured Parties to be afforded thereby; and (x) such other assets of the Grantors as may be agreed by the Collateral Agent (at the direction of the Required Purchasers); provided, that "Excluded Property" shall not include any proceeds, products, substitutions or replacements of Excluded Property (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Property).

"Guaranteed Obligations" shall have the meaning set forth in Section 2.1(a).

"Guarantors" shall mean, collectively, each Grantor other than the Issuer.

"Intellectual Property Licenses" shall mean any and all Trademark Licenses, Copyright Licenses and Patent Licenses.

"Intellectual Property Rights" shall mean any and all Trademarks, Copyrights, Patents, Software (including source code, object code, data and related documentation), internet domain names, trade secrets and other confidential business information and other intellectual property or proprietary rights.

"Patent Licenses" shall mean any and all present and future agreements with respect to which a Grantor is a party providing for the granting of any right in or to Patents (whether the applicable Grantor is licensee or licensor thereunder).

"Patents" shall mean, collectively, with respect to each Grantor, all letters patent owned by or issued or assigned to, and all patent applications and registrations made by, such Grantor (whether established or registered or recorded in the United States, or any other country or any political subdivision thereof and, in each case, whether owned by or assigned to such Grantor) and all (i) rights and privileges arising under applicable law with respect to such Grantor's use of any patents, (ii) inventions and improvements described and claimed therein, (iii) reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof and amendments thereto, and rights to obtain any of the foregoing, (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. As of the Closing Date, all Patents of the Grantors are set forth on Schedule 7.

"Pledged Certificated Stock" shall mean all Certificated Securities and any other Capital Stock or Stock Equivalent of any Person, other than Excluded Property, evidenced by a certificate, instrument or other similar document, in each case, now owned or at any time hereafter acquired by any Grantor, and any dividend or distribution of cash, instruments or other property made on, in respect of or in exchange for the foregoing from time to time. As of the Closing Date, all Pledged Certificated Stock of the Grantors is set forth on Schedule 2.

"Pledged Securities" shall mean, collectively, all Pledged Certificated Stock, all Pledged Uncertificated Stock and all Promissory Notes held by a Grantor and pledged to the Collateral Agent hereunder.

"Pledged Security Issuers" shall mean, collectively, each issuer of a Pledged Security.

"Pledged Uncertificated Stock" shall mean any Capital Stock or Stock Equivalent of any Person, other than Pledged Certificated Stock and Excluded Property, in each case now owned or at any time hereafter acquired by any Grantor, including all right, title and interest of any Grantor as a limited or general partner in any partnership or as a member of any limited liability company not constituting Pledged Certificated Stock, all right, title and interest of any Grantor in, to and under any organizational document of any partnership or limited liability company to which it is a party, and any dividend or distribution of cash, instruments, or other property made on, in respect of, or in exchange for the foregoing from time to time. As of the Closing Date, all Pledged Uncertificated Stock of the Grantors is set forth on Schedule 2.

"Promissory Note" shall mean an instrument within the description of "promissory note" as defined in Article 9 of the UCC.

"Qualified ECP Guarantor" shall mean, in respect of any Swap Obligation, each Note Party that has total assets exceeding $10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" as defined in the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualified as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Secured Obligations" shall have the meaning set forth in Section 3.1.

"Secured Parties" shall mean, collectively, the Collateral Agent, the Purchasers, the Purchaser-Related Hedge Providers and the Bank Product Providers.

"Securities Act" shall mean the Securities Act of 1933, as amended and in effect from time to time.

"Stock Equivalents" shall mean all Securities convertible into or exchangeable for Capital Stock or any other Stock Equivalent and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any Capital Stock or any other Stock Equivalent, whether or not presently convertible, exchangeable or exercisable.

"Swap Obligations" shall mean any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Termination Date" shall have the meaning set forth in Section 10.16(a).

"Trademark Licenses" shall mean any and all present and future agreements with respect to which a Grantor is a party providing for the granting of any right in or to Trademarks (whether the applicable Grantor is licensee or licensor thereunder).

"Trademarks" shall mean, collectively, with respect to each Grantor, all trademarks, service marks, slogans, logos, certification marks, trade dress, corporate names, trade names and other source or business identifiers, whether registered or unregistered, owned by or assigned to such Grantor and all registrations and applications for the foregoing (whether by statutory or common law, whether established or registered in the United States, any State thereof, or any other country or any political subdivision thereof and, in each case, whether owned by or assigned to such Grantor), and all goodwill associated therewith, now existing or hereafter adopted or acquired, together with any and all (i) rights and privileges arising under applicable law with respect to such Grantor's use of any trademarks, (ii) extensions and renewals thereof and amendments thereto, (iii) 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, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present or future infringements thereof. As of the Closing Date, all Trademark registrations and applications of the Grantors are set forth on Schedule 8.

"UCC" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York.

Section 1.2 Other Definitional Provisions; References. The definition 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, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (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, (d) all references herein to Articles, Sections, Exhibits, Schedules and Annexes shall, unless otherwise stated, be construed to refer to Articles and Sections of, and Exhibits, Schedules and Annexes to, this Agreement and (e) 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. Where the context requires, terms relating to the Collateral or any part thereof, when used in relation to a Grantor, shall refer to such Grantor's Collateral or the relevant part thereof. The words "knowledge of any Grantor" or any like term shall mean the actual knowledge of a Responsible Officer of any Grantor.

ARTICLE II

GUARANTEE

Section 2.1 Guarantee.

(a) Each Guarantor unconditionally guarantees, jointly with the other Guarantors and severally, as a primary obligor and not merely as a surety, (i) the due and punctual payment of all Obligations of the Issuer and the other Note Parties including (A) 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 Notes, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (B) 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 the Note Parties to the Collateral Agent and the Purchasers under the Note Purchase Agreement and the other Note Documents; (ii) the due and punctual performance of all covenants, agreements, obligations and liabilities of the Note Parties under or pursuant to the Note Purchase Agreement and the other Note Documents; (iii) the due and punctual payment of all Bank Product Obligations; and (iv) the due and punctual payment and performance of all Hedging Obligations owed by any Note Party to any Purchaser-Related Hedge Provider (other than any Excluded Swap Obligations with respect to such Guarantor) (all the monetary and other obligations referred to in the preceding clauses (i) through (iv) being collectively called the "Guaranteed Obligations"). Each Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice to or further assent from such Guarantor and that such Guarantor will remain bound by its guarantee notwithstanding any extension or renewal of any Guaranteed Obligations made in accordance with the Note Purchase Agreement.

(b) Each Guarantor further agrees that its guarantee constitutes a joint and several obligation and a guarantee of payment when due and not of collection, and waives to the extent permitted by applicable law: (i) promptness and diligence, (ii) notice of acceptance and any other notice with respect to any of the Guaranteed Obligations under this Article II and any requirement that the Secured Parties exhaust any right or take any action against any Note Party or any other Person or any Collateral, (iii) any right to compel or direct any Secured Party to seek payment or recovery of any amounts owed under this Article II from any one particular fund or source or to exhaust any right or take any action against any other Note Party, any other Person or any Collateral and (iv) any requirement that any Secured Party exhaust any right to take any action against any Note Party, any other Person or any Collateral.

(c) It is the intent of each Guarantor and the Collateral Agent that the maximum obligations of the Guarantors hereunder shall be, but not in excess of:

(i) in a case or proceeding commenced by or against any Guarantor under the provisions of Title 11 of the United States Code, 11 U.S.C. §§101 et seq., as amended and in effect from time to time (the "Bankruptcy Code"), on or within one year from the date on which any of the Guaranteed Obligations are incurred, the maximum amount which would not otherwise cause the Guaranteed Obligations to be avoidable or unenforceable against such Guarantor under (A) Section 548 of the Bankruptcy Code or (B) any state fraudulent transfer or fraudulent conveyance act or statute applied in any such case or proceeding by virtue of Section 544 of the Bankruptcy Code; or

(ii) in a case or proceeding commenced by or against any Guarantor under the Bankruptcy Code subsequent to one year from the date on which any of the Guaranteed Obligations are incurred, the maximum amount which would not otherwise cause the Guaranteed Obligations to be avoidable or unenforceable against such Guarantor under any state fraudulent transfer or fraudulent conveyance act or statute applied in any such case or proceeding by virtue of Section 544 of the Bankruptcy Code; or

(iii) in a case or proceeding commenced by or against any Guarantor under any law, statute or regulation other than the Bankruptcy Code (including, without limitation, any other bankruptcy, reorganization, arrangement, moratorium, readjustment of debt, dissolution, liquidation or similar debtor relief laws), the maximum amount which would not otherwise cause the Guaranteed Obligations to be avoidable or unenforceable against such Guarantor under such law, statute or regulation, including, without limitation, any state fraudulent transfer or fraudulent conveyance act or statute applied in any such case or proceeding.

(d) The substantive laws under which the possible avoidance or unenforceability of the Guaranteed Obligations as may be determined in any case or proceeding shall hereinafter be referred to as the "Avoidance Provisions". To the extent set forth in subsections (c)(i), (ii) and (iii) of this Section, but only to the extent that the Guaranteed Obligations would otherwise be subject to avoidance or found unenforceable under the Avoidance Provisions, if any Guarantor is not deemed to have received valuable consideration, fair value or reasonably equivalent value for the Guaranteed Obligations, or if the Guaranteed Obligations would render such Guarantor insolvent, or leave such Guarantor with an unreasonably small capital to conduct its business, or cause such Guarantor to have incurred debts (or to have intended to have incurred debts) beyond its ability to pay such debts as they mature, in each case as of the time any of the Guaranteed Obligations are deemed to have been incurred under the Avoidance Provisions and after giving effect to the contribution rights set forth in Section 2.1(g) hereof and any other indemnifications payments due to such Guarantor by any other Guarantor, the maximum Guaranteed Obligations for which such Guarantor shall be liable hereunder shall be reduced to that amount which, after giving effect thereto, would not cause the Guaranteed Obligations, as so reduced, to be subject to avoidance or unenforceability under the Avoidance Provisions (such maximum amount, the "Allocable Amount").

(e) This Section is intended solely to preserve the rights of the Collateral Agent and the Secured Parties hereunder to the maximum extent that would not cause the Guaranteed Obligations of such Guarantor to be subject to avoidance or unenforceability under the Avoidance Provisions, and neither the Grantors nor any other Person shall have any right or claim under this Section as against the Collateral Agent or any Secured Party that would not otherwise be available to such Person under the Avoidance Provisions.

(f) Each Guarantor agrees that if the maturity of any of the Guaranteed Obligations is accelerated by bankruptcy or otherwise, such maturity shall also be deemed accelerated for the purpose of this guarantee without demand or notice to such Guarantor. The guarantee contained in this Article shall remain in full force and effect until the earlier of (i) the Termination Date and (ii) in respect of any Guarantor, the release of such Guarantor from this Agreement in accordance with the provisions of Section 10.16(b) hereof.

(g) To the extent that any Guarantor shall make a payment under this guarantee of all or any of the Guaranteed Obligations (a "Guarantor Payment") which, taking into account all other Guarantor Payments then previously or concurrently made by such Guarantor, exceeds the amount which such Guarantor would otherwise have paid if each Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion that such Guarantor's Allocable Amount (in effect immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of all of the Guarantors in effect immediately prior to the making of such Guarantor Payment, then, following payment in full of the Guaranteed Obligations (other than Hedging Obligations owed by any Note Party to any Purchaser-Related Hedge Provider, Bank Product Obligations and indemnities and other contingent obligations not then due and payable and as to which no claim has been made), such Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each of the other Guarantors for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment. This Section 2.1(g) is intended only to define the relative rights of Guarantors and nothing set forth in this Section 2.1(g) is intended to or shall impair the obligations of the Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Agreement.

Section 2.2 **Payments**. Each Guarantor hereby agrees and guarantees that payments hereunder will be paid to the Secured Parties without set-off or counterclaim in Dollars at the office or to the bank account of each such Secured Party provided for in the Note Purchase Agreement.

ARTICLE III

GRANT OF SECURITY INTEREST

Section 3.1 **Grant of Security Interest**. Each Grantor hereby pledges and grants to the Collateral Agent, for the ratable benefit of the Secured Parties, a first-priority security interest in and lien on all right, title and interest of such Grantor in all of the following property, wherever located and whether now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest and whether now existing or hereafter coming into existence (collectively, the "Collateral"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Obligations, other than any Excluded Swap Obligation with respect to such Grantor (collectively, the "Secured Obligations"):

(a) all Accounts, including, without limitation, all Accounts owing by any Governmental Authority (including, without limitation, any and all accounts arising or reimbursable under Medicare, Medicaid or any other Governmental Payor Arrangement), and Chattel Paper (whether tangible or electronic);

(b) all Commercial Tort Claims described on Schedule 10 hereto as such Schedule may be updated from time to time;

(c) all contracts together with all contract rights arising thereunder;

(d) all money, cash, cash equivalents, Deposit Accounts, Securities Accounts, commodities accounts and lockboxes and all money, cash, Securities and other Investment Property deposited therein;

(e) all Documents;

(f) all General Intangibles;

(g) all Goods (including, without limitation, all Inventory, all Equipment and all Fixtures);

(h) all Instruments;

(i) all Investment Property;

(j) all Letter-of-Credit Rights;

(k) all Notes (including, without limitation, all intercompany Notes) and all other intercompany obligations between the Note Parties;

(l) all Pledged Securities;

(m) all Intellectual Property Rights;

(n) all Intellectual Property Licenses;

(o) all books and records, Supporting Obligations and related letters of credit or other claims and causes of action, in each case to the extent pertaining to the Collateral; and

(p) to the extent not otherwise included, substitutions, replacements, accessions, products and other Proceeds (whether tangible or intangible and including, without limitation, insurance proceeds, licenses, royalties, income, payments, claims, damages, proceeds of suit, Cash Proceeds and Noncash Proceeds) of any or all of the foregoing and all collateral security, guarantees and other Supporting Obligations given with respect to any of the foregoing;

provided that, notwithstanding the foregoing, no Lien or security interest is hereby granted on, and the Collateral shall not include, any Excluded Property, and, to the extent that any Collateral later becomes Excluded Property, the Lien granted hereunder will automatically be deemed to have been released; provided, further, that if and when any property shall cease to be Excluded Property, a Lien on and security interest in such property shall automatically be deemed granted therein.

Section 3.2 **Transfer of Pledged Securities**. All certificates and instruments representing or evidencing the Pledged Certificated Stock shall be delivered to the Collateral Agent or a Person designated by the Collateral Agent in accordance with the terms of the Note Purchase Agreement and shall be held pursuant hereto by the Collateral Agent or a Person designated by the Collateral Agent and, in the case of an instrument or certificate in registered form, shall be duly indorsed to the Collateral Agent or in blank by an effective endorsement (whether on the certificate or instrument or on a separate writing), and accompanied by any required transfer tax stamps to effect the pledge of the Pledged Securities to the Collateral Agent. Notwithstanding the preceding sentence, all Pledged Certificated Stock must be delivered or transferred in such manner, and each Grantor shall take all such further action as is necessary to permit the Collateral Agent to be a "protected purchaser" to the extent of its security interest as provided in Section 8-303 of the UCC.

Section 3.3 **Grantors Remain Liable under Accounts, Chattel Paper and Payment Intangibles**. Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each of the Accounts, Chattel Paper and Payment Intangibles owned or held by it to observe and perform all of the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise to each such Account, Chattel Paper or Payment Intangible. Neither the Collateral Agent nor any other Secured Party shall have any obligation or liability under any Account, Chattel Paper or Payment Intangible (or any agreement giving rise thereto) by reason of or arising out of this Agreement or the receipt by the Collateral Agent or any such other Secured Party of any payment relating to such Account, Chattel Paper or Payment Intangible pursuant hereto, nor shall the Collateral Agent or any other Secured Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Account, Chattel Paper or Payment Intangible (or any agreement giving rise thereto) to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any Account, Chattel Paper or Payment Intangible (or any agreement giving rise thereto), to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

ARTICLE IV

ACKNOWLEDGMENTS, WAIVERS AND CONSENTS

Section 4.1 Acknowledgments, Waivers and Consents.

(a) Each Guarantor acknowledges and agrees that the obligations undertaken by it under this Agreement involve the guarantee of, and each Grantor acknowledges and agrees that the obligations undertaken by it under this Agreement involve the provision of security in the Collateral for, obligations of Persons other than such Grantor and that such Grantor's guarantee and provision of security in the Collateral for the Secured Obligations are absolute, irrevocable and unconditional under any and all circumstances (subject to the terms of this Agreement and the other Note Documents and subject to any Requirements of Law). Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated herein and in the Note Purchase Agreement and that the waivers set forth in clause (ii) below are knowingly made in contemplation of such benefits. In full recognition and furtherance of the foregoing, each Grantor understands and agrees, to the fullest extent permitted under applicable law and except as may otherwise be expressly and specifically provided in the Note Documents, that each Grantor shall remain obligated hereunder (including with respect to each Guarantor, the guarantee made by it herein and, with respect to each Grantor, the security in the Collateral provided by such Grantor herein), and the enforceability and effectiveness of this Agreement and the liability of such Grantor, and the rights, remedies, powers and privileges of the Collateral Agent and the other Secured Parties under this Agreement and the other Note Documents, shall not be affected, limited, reduced, discharged or terminated in any way and hereby agrees that:

(i) notwithstanding that, without any reservation of rights against any Grantor and without notice to or further assent by any Grantor, in each case, subject to and in accordance with the terms of the Note Documents, (A) any demand for payment of any of the Secured Obligations made by the Collateral Agent or any other Secured Party may be rescinded by the Collateral Agent or such other Secured Party and any of the Secured Obligations continued; (B) the Secured Obligations, the liability of any other Person upon or for any part thereof or any collateral security or guarantee therefor or right of offset with respect thereto may, from time to time, in whole or in part, be renewed, extended, amended, restated, modified, accelerated, compromised, waived, surrendered or released by, or any indulgence or forbearance in respect thereof granted by, the Collateral Agent or any other Secured Party; (C) the Note Purchase Agreement, the other Note Documents and all other documents executed and delivered in connection therewith or in connection with Hedging Obligations and Bank Product Obligations included as Obligations may be amended, restated, modified, supplemented or terminated, in whole or in part, as the Collateral Agent (or the Required Purchasers, all Purchasers, or the other parties thereto, as the case may be) may deem advisable from time to time; (D) the Issuer, any Guarantor or any other Person may from time to time accept or enter into new or additional agreements, security documents, guarantees or other instruments in addition to, in exchange for or relative to any Note Document, all or any part of the Secured Obligations or any Collateral now or in the future serving as security for the Secured Obligations; (E) any collateral security, guarantee or right of offset at any time held by the Collateral Agent or any other Secured Party for the payment of the Secured Obligations may be sold, exchanged, waived, surrendered or released; and (F) any other event shall occur which constitutes a defense or release of sureties generally (other than a defense of payment or performance in full of all Guaranteed Obligations and Secured Obligations (other than Hedging Obligations owed by any Note Party to any Purchaser-Related Hedge Provider, Bank Product Obligations and indemnities and other contingent obligations not then due and payable and as to which no claim has been made)); and

(ii) regardless of, and each Grantor hereby expressly waives to the fullest extent permitted by law, any defense now or in the future arising by reason of, (A) the illegality, invalidity or unenforceability of the Note Purchase Agreement, any other Note Document, any of the Secured Obligations or any other security in the Collateral therefor or guarantee or right of offset with respect thereto at any time or from time to time held by the Collateral Agent or any other Secured Party (other than any such illegality, invalidity or unenforceability that occurs solely as a result of any action or inaction on the part of the Collateral Agent or any Purchaser); (B) any defense, set-off or counterclaim which may at any time be available to or be asserted by any Grantor or any other Person against the Collateral Agent or any other Secured Party; (C) the insolvency, bankruptcy arrangement, reorganization, adjustment, composition, liquidation, disability, dissolution or lack of corporate or other organizational power of any Grantor or any other Person at any time liable for the payment of all or part of the Secured Obligations or the failure of the Collateral Agent or any other Secured Party to file or enforce a claim in bankruptcy or other proceeding with respect to any Person, or any sale, lease or transfer of any or all of the assets of any Grantor, or any changes in the shareholders of any Grantor; (D) the fact that any Collateral or Lien contemplated or intended to be given, created or granted as security for the repayment of the Secured Obligations shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other Lien (other than solely as a result of any action or inaction on the part of the Collateral Agent or any Purchaser), it being recognized and agreed by each of the Grantors that it is not entering into this Agreement in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectability or value of any of the Collateral for the Secured Obligations; (E) any failure of the Collateral Agent or any other Secured Party to marshal assets in favor of any Grantor or any other Person, to exhaust any Collateral for all or any part of the Secured Obligations, to pursue or exhaust any right, remedy, power or privilege it may have against any Grantor or any other Person or to take any action whatsoever to mitigate or reduce any Grantor's liability under this Agreement or any other Note Document; (F) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation (but subject to Section 2.1(c)-(g) hereof); (G) the possibility that the Secured Obligations may at any time and from time to time exceed the aggregate liability of such Grantor under this Agreement; (H) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from any Note Document, including, without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Note Party or otherwise; or (I) any other circumstance or act whatsoever, including any action or omission of the type described in subsection (a)(i) of this Section (with or without notice to or knowledge of any Grantor), which constitutes, or might be construed to constitute, an equitable or legal discharge or defense of the Issuer for the Obligations, or of such Guarantor under the guarantee contained in Article II, or with respect to the collateral security provided by such Grantor herein, or which might be available to a surety or guarantor, in bankruptcy or in any other instance (other than, in the case of clauses (A) through (I) hereof, (x) a defense of payment or performance in full of all Guaranteed Obligations and Secured Obligations (other than Hedging Obligations owed by any Note Party to any Purchaser-Related Hedge Provider, Bank Product Obligations and indemnities and other contingent obligations not then due and payable and as to which no claim has been made) or (y) a defense that an Event of Default has not occurred under the Note Purchase Agreement or any other Note Document).

(b) Each Grantor hereby waives to the extent permitted by law and, in each case, except as expressly provided otherwise in any Note Document, (i) all notices to such Grantor, or to any other Person, including, but not limited to, notices of the acceptance of this Agreement, the guarantee contained in Article II or the provision of security in the Collateral provided herein, or the creation, renewal, extension, modification or accrual of any Secured Obligations, or notice of or proof of reliance by the Collateral Agent or any other Secured Party upon the guarantee contained in Article II or upon the security in the Collateral provided herein, or of default in the payment or performance of any of the Secured Obligations owed to the Collateral Agent or any other Secured Party and enforcement of any right or remedy with respect thereto, or notice of any other matters relating thereto; the Secured Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in Article II and the security in the Collateral provided herein and no notice of creation of the Secured Obligations or any extension of credit already or hereafter contracted by or extended to the Issuer need be given to any Grantor, and all dealings between the Issuer and any of the Grantors, on the one hand, and the Collateral Agent and the other Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in Article II and on the security in the Collateral provided herein; (ii) diligence and demand of payment, presentment, protest, dishonor and notice of dishonor; (iii) any statute of limitations affecting any Grantor's liability hereunder or the enforcement thereof; (iv) all rights of revocation with respect to the Secured Obligations, the guarantee contained in Article II and the provision of security in the Collateral herein and acknowledges that Article II and the provision of security in the Collateral herein is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future; and (v) all principles or provisions of law which conflict with the terms of this Agreement and which can, as a matter of law, be waived.

(c) When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Grantor, the Collateral Agent or any other Secured Party may, but shall be under no obligation to, join or make a similar demand on or otherwise pursue or exhaust such rights and remedies as it may have against the Issuer, any other Grantor or any other Person or against any collateral security or guarantee for the Secured Obligations or any right of offset with respect thereto, and any failure by the Collateral Agent or any other Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from the Issuer, any other Grantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Issuer, any other Grantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Grantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Collateral Agent or any other Secured Party against any Grantor. For the purposes hereof, "demand" shall include the commencement and continuance of any legal proceedings. Neither the Collateral Agent nor any other Secured Party shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Secured Obligations or for the guarantee contained in Article II or any property subject thereto.

Section 4.2 **No Subrogation, Contribution or Reimbursement**. Until all Secured Obligations are satisfied in full (other than Hedging Obligations owed by any Note Party to any Purchaser-Related Hedge Provider, Bank Product Obligations and indemnities and other contingent obligations not then due and payable and as to which no claim has been made) and all Commitments of each Purchaser under the Note Purchase Agreement or any other Note Document have been terminated, notwithstanding any payment made by any Grantor hereunder or any set-off or application of funds of any Grantor by the Collateral Agent or any other Secured Party, each Grantor's right of subrogation to any of the rights of the Collateral Agent or any other Secured Party against the Issuer or any other Grantor or any collateral security or guarantee or right of offset held by the Collateral Agent or any other Secured Party for the payment of the Secured Obligations shall be subordinated, and no Grantor shall seek or be entitled to seek any indemnity, exoneration, participation, contribution or reimbursement from the Issuer or any other Grantor in respect of payments made by such Grantor hereunder, and each Grantor hereby expressly agrees not to exercise any or all such rights of subrogation, reimbursement, indemnity and contribution until the payment in full in cash of the Secured Obligations (other than Hedging Obligations owed by any Note Party to any Purchaser-Related Hedge Provider, Bank Product Obligations and indemnities and other contingent obligations not then due and payable and as to which no claim has been made). Each Grantor further agrees that to the extent that such waiver and release set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement, indemnity and contribution such Grantor may have against the Issuer or any other Grantor or against any collateral or security or guarantee or right of offset held by the Collateral Agent or any other Secured Party shall be junior and subordinate to any rights the Collateral Agent and the other Secured Parties may have against the Issuer and such Grantor and to all right, title and interest the Collateral Agent and the other Secured Parties may have in such collateral or security or guarantee or right of offset. In accordance with the terms hereof, the Collateral Agent, for the benefit of the Secured Parties, may use, sell or dispose of any item of Collateral or security as it sees fit without regard to any subrogation rights any Grantor may have, and upon any disposition or sale of such Collateral by the Collateral Agent in accordance with the terms hereof, any rights of subrogation any Grantor may have that specifically attach to such Collateral shall terminate.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

To induce the Collateral Agent and the other Secured Parties to enter into the Note Purchase Agreement and the other Note Documents, to induce the Purchasers to purchase the Notes pursuant to the Note Purchase Agreement and to induce the Purchaser-Related Hedge Providers and the Bank Product Providers to enter into Hedging Obligations and Bank Product Obligations with the Grantors, each Grantor represents and warrants to the Collateral Agent and each other Secured Party as follows:

Section 5.1 **Confirmation of Representations in Note Purchase Agreement**. Each Guarantor represents and warrants to the Secured Parties that the representations and warranties set forth in Article IV of the Note Purchase Agreement that specifically relate to such Guarantor (in its capacity as a Note Party or a Subsidiary of the Issuer, as the case may be) are true and correct in all material respects (or if already qualified by materiality or Material Adverse Effect, in all respects); provided that each reference in each such representation and warranty to the Issuer's knowledge shall, for the purposes of this Section, be deemed to be a reference to such Guarantor's knowledge.

Section 5.2 **Benefit to the Guarantors**. As of the Closing Date, the Issuer is a member of an affiliated group of companies that includes each Guarantor, and the Issuer and the Guarantors are engaged in related businesses permitted pursuant to Section 5.3 of the Note Purchase Agreement. Each Guarantor is a Subsidiary of the Issuer, and the guaranty and surety obligations of each Guarantor pursuant to this Agreement reasonably may be expected to benefit, directly or indirectly, such Guarantor; and each Guarantor has determined that this Agreement is necessary and convenient to the conduct and promotion of the business of such Guarantor and the Issuer.

Section 5.3 **Pledged Securities; Promissory Notes**. As of the Closing Date, Schedule 2 correctly sets forth (a) all duly authorized, issued and outstanding Capital Stock of each Guarantor and each other Person that is beneficially owned by each Grantor and (b) all Notes held by each Grantor, in each case on the Closing Date. No Pledged Security issued by a limited liability company or a limited partnership is a "Security" within the meaning of Article 8 of the UCC, unless such Pledged Security is evidenced by a certificate.

Section 5.4 **First Priority Liens**. The Liens granted to the Collateral Agent, for the benefit of the Secured Parties, pursuant to this Agreement shall be valid, first-priority, fully perfected Liens on, and security interests in, all right, title and interest of the Grantors in the Collateral and the proceeds thereof, as security for the Secured Obligations, prior to and superior to any other Person (except for Specified Permitted Liens) upon the occurrence of the following with respect to such Collateral: (i) in the case of Pledged Certificated Stock, when certificates representing such Pledged Certificated Stock together with transfer powers thereto are delivered to the Collateral Agent or its designee, (ii) in the case of deposit accounts (other than Excluded Accounts) or Investment Property, when an Account Control Agreement is executed and delivered by all parties thereto with respect to such deposit accounts or Investment Property, (iii) (x) in the case of Copyrights, when the filings in subsection (iv) of this Section are made and when, if applicable, the Copyright Security Agreements in the form attached hereto as Annex II are filed in the United States Copyright Office, and (y) in the case of Trademarks or Patents, when the filings in subsection (iv) of this Section are made and when, if applicable, the Trademark Security Agreements or the Patent Security Agreements, as applicable, in the form attached hereto as Annex II are filed in the United States Patent and Trademark Office and (iv) in the case of the other Collateral described in this Agreement in which a Lien may be perfected by the filing of a financing statement, when UCC financing statements are filed in the appropriate filing offices as specified in Article 9 of the UCC (which, as of the Closing Date, for each of the Grantors is the filing office set forth for each Grantor on Schedule 3).

Section 5.5 **Legal Name, Organizational Status, Chief Executive Office**. As of the Closing Date, the correct legal name of such Grantor, such Grantor's jurisdiction of organization, organizational identification number (if any), federal taxpayer identification number and the location of such Grantor's chief executive office or sole place of business are specified on Schedule 4.

Section 5.6 **Prior Names, Prior Chief Executive Offices**. Schedule 5 correctly sets forth (a) all names and trade names that such Grantor has used in the five years preceding the Closing Date and (b) each chief executive office of such Grantor in the five years preceding the Closing Date (if different from that which is set forth in Schedule 4); provided that, with respect to any Grantor that was acquired during such five-year period preceding the Closing Date, the information set forth on Schedule 5 hereto shall be correct to the best of such Grantor's knowledge.

Section 5.7 **Chattel Paper**. No Collateral constituting Chattel Paper in excess of $1,000,000 or Instruments contains any statement therein to the effect that such Collateral has been assigned to an identified party other than the Collateral Agent, and the grant of a security interest in such Collateral in favor of the Collateral Agent hereunder does not violate the rights of any other Person as a secured party.

Section 5.8 **Truth of Information; Accounts**. All written information with respect to the Collateral set forth in any schedule, certificate or other writing (other than the Profit Plans and other forward-looking information (which shall be subject solely to the representation set forth in the last sentence of Section 4.4(a) of the Note Purchase Agreement), information regarding third parties and general economic or industry information) furnished by or on behalf of such Grantor to the Collateral Agent or any other Secured Party (as modified or supplemented by any other information so furnished), is or will be, when furnished and taken as a whole, complete and correct in all material respects and does not or will not, when furnished and taken as a whole, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made. As of the Closing Date, the locations where each Grantor keeps its books and records concerning any Accounts, Chattel Paper and Payment Intangibles that constitute Collateral are set forth on Schedule 6.

Section 5.9 **Governmental Obligors**. Except as disclosed to the Collateral Agent from time to time, none of the Account Debtors on such Grantor's Accounts, Chattel Paper or Payment Intangibles is a Governmental Authority, except to the extent such Accounts, Chattel Paper or Payment Intangibles have an aggregate value of less than $1,000,000 at any time outstanding.

Section 5.10 **Intellectual Property Rights**. Schedule 7 sets forth all Patents and Patent Licenses owned by such Grantor as of the Closing Date; Schedule 8 sets forth all registered Trademarks and Trademark Licenses owned by such Grantor as of the Closing Date; and Schedule 9 sets forth all registered Copyrights and Copyright Licenses owned by such Grantor as of the Closing Date, in each of the foregoing cases, excluding commercially available software and non-exclusive licenses granted by or, to the extent such licenses are not material to the business of such Grantor, to such Grantor in the ordinary course of business. To the best of each such Grantor's knowledge, each such Patent, Trademark and Copyright is valid, subsisting, unexpired and enforceable and has not been abandoned. Except as set forth in any such Schedule and any non-exclusive licenses made in the ordinary course of business, none of such Patents, Trademarks and Copyrights is the subject of any licensing or franchise agreement. Except for the regular course of prosecution, (a) no holding, decision or judgment has been rendered by any Governmental Authority which would limit, cancel or question the validity of any such Patent, Trademark or Copyright and (b) no action or proceeding is pending (i) seeking to limit, cancel or question the validity of any such Patent, Trademark or Copyright, or (ii) which, if adversely determined, would have a material adverse effect on the value of any such Patent, Trademark or Copyright. Each Grantor owns all material Intellectual Property Rights purported to be owned by such Grantor free and clear of any Liens, other than Liens permitted by Section 7.2 of the Note Purchase Agreement. The Intellectual Property Rights owned by each Grantor do not infringe or otherwise violate any intellectual property or other proprietary rights of any other Person in a manner that could result in a materially adverse claim. There is no action pending or, to the best of such Grantor's knowledge, threatened in writing, alleging any such infringement or violation or challenging such Grantor's rights in or to any such Intellectual Property Rights. To the best of each Grantor's knowledge, no Person is infringing or otherwise violating any Intellectual Property Rights owned by such Grantor or any rights of such Grantor in, to or under any Intellectual Property Licenses.

ARTICLE VI

COVENANTS

Each Grantor covenants and agrees with the Collateral Agent and the other Secured Parties that, so long as any Purchaser has a Commitment under the Note Purchase Agreement or any Secured Obligation remains unpaid or outstanding (other than Hedging Obligations owed by any Note Party to any Purchaser-Related Hedge Provider, Bank Product Obligations and indemnities and other contingent obligations not then due and payable and as to which no claim has been made):

Section 6.1 **Covenants in Note Purchase Agreement**. In the case of each Guarantor, such Guarantor shall take, or shall refrain from taking, as the case may be, each action that is necessary to be taken or not taken, as the case may be, so that no Default or Event of Default is caused by the failure to take such action or to refrain from taking such action by such Guarantor or any of its Subsidiaries.

Section 6.2 **Maintenance of Perfected Security Interest; Further Documentation**.

(a) Such Grantor shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 5.4 and shall defend such security interest against the claims and demands of all Persons whomsoever, except for Liens permitted by Section 7.2 of the Note Purchase Agreement.

(b) Such Grantor will execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, Mortgages and other documents), which may be required under any applicable law, or which the Collateral Agent or the Required Purchasers may reasonably request, to effectuate the transactions contemplated by the Note Documents or to grant, preserve, protect or perfect the Liens created by this Agreement and the other Collateral Documents or the validity or priority of any such Lien, all at the expense of the Grantors, including executing and delivering (i) with regard to Copyright registrations and applications, a Copyright Security Agreement substantially in the form of Annex II to this Agreement for filing with the United States Copyright Office, (ii) with regard to Patents, a Patent Security Agreement substantially in the form of Annex II to this Agreement for filing with the United States Patent and Trademark Office and (iii) with regard to Trademark registrations and applications, a Trademark Security Agreement substantially in the form of Annex II to this Agreement for filing with the United States Patent and Trademark Office. Such Grantor also agrees to provide to the Collateral Agent and the Purchasers, from time to time upon request, evidence reasonably satisfactory to the Collateral Agent or the Required Purchasers, as applicable, as to the perfection and priority of the Liens created or intended to be created by this Agreement and the other Collateral Documents.

(c) Without limiting the obligations of the Grantors under subsection (b) of this Section, (i) upon the reasonable request of the Collateral Agent or the Required Purchasers, such Grantor shall take or cause to be taken all actions (other than any actions required to be taken by the Collateral Agent) reasonably requested by the Collateral Agent or the Required Purchasers to cause the Collateral Agent to (A) have "control" (within the meaning of Sections 9-104, 9-105, 9-106, and 9-107 of the UCC) over any Collateral constituting Deposit Accounts, Electronic Chattel Paper, Investment Property (including the Pledged Securities), or Letter-of-Credit Rights, including, without limitation, executing and delivering any agreements, in form and substance reasonably satisfactory to the Collateral Agent and the Required Purchasers, with securities intermediaries, issuers or other Persons in order to establish "control", and each Grantor shall promptly notify the Collateral Agent and the other Secured Parties of such Grantor's acquisition of any such Collateral, and (B) be a "protected purchaser" (as defined in Section 8-303 of the UCC); (ii) with respect to Collateral other than Pledged Certificated Stock and Goods covered by a Document in the possession of a Person other than such Grantor, the Collateral Agent (or any designee of the Collateral Agent) or any other Secured Party, such Grantor shall use its commercially reasonable efforts to obtain written acknowledgment that such Person holds possession for the Collateral Agent's benefit; and (iii) with respect to any Collateral constituting Goods with a value in excess of $1,000,000 that are in the possession of a bailee, such Grantor shall provide prompt notice to the Collateral Agent and the other Secured Parties of any such Collateral then in the possession of such bailee, and such Grantor shall take or cause to be taken all actions (other than any actions required to be taken by the Collateral Agent or any other Secured Party or any action required to be taken by such bailee) necessary or reasonably requested by the Collateral Agent or the Required Purchasers to cause the Collateral Agent to have a perfected security interest in such Collateral under applicable law.

Section 6.3 **Maintenance of Records**. Such Grantor will keep and maintain at its own cost and expense proper books and records with respect to the Collateral, including, without limitation, a record of all payments received and all credits granted with respect to the Accounts comprising any part of the Collateral. For the Collateral Agent's and the other Secured Parties' further security, the Collateral Agent, for the ratable benefit of the Secured Parties, shall have a security interest in all of such Grantor's books and records pertaining to the Collateral.

Section 6.4 **Right of Inspection**. Such Grantor will permit any representative of the Collateral Agent or any Purchaser to visit and inspect its properties, to examine its books and records and to make copies and take extracts therefrom, and to discuss its affairs, finances and accounts with any of its officers and with its independent certified public accountants (provided that such Grantor is provided reasonable prior notice of any discussion with its auditors or accountants and is afforded an opportunity to participate in such discussions), all at such reasonable times and subject to reasonable prior notice to such Grantor; provided that, so long as no Event of Default has occurred and is continuing, visits and inspections under this Section 6.4 shall be limited to one time per Fiscal Year for the Collateral Agent and all of the Purchasers. Any Related Party of the Collateral Agent or any Secured Party that attends or participates in any such visit or inspection shall, prior to such attendance or participation, expressly agree to be subject to and bound by the confidentiality provisions of the Note Purchase Agreement or shall otherwise be bound by professional ethics rules to maintain such confidentiality.

Section 6.5 **Further Identification of Collateral**. Such Grantor will furnish to the Collateral Agent from time to time (but no more than two (2) times during any twelve month period when no Event of Default has occurred and is continuing), at such Grantor's sole cost and expense, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Collateral Agent or the Required Purchasers may reasonably request, all in reasonable detail.

Section 6.6 **Changes in Names, Locations**. Such Grantor recognizes that financing statements pertaining to the Collateral have been or may be filed where such Grantor is organized. Without limitation of any other covenant herein, such Grantor will not cause or permit (i) any change to be made in its legal name, identity or corporate, limited liability company, or limited partnership structure or (ii) any change to (A) the identity of any warehouseman, common carrier, other third party transporter, bailee or any agent or processor in possession or control of any Collateral with a value in excess of $1,000,000 or (B) such Grantor's jurisdiction of organization, unless such Grantor shall have first (1) notified the Collateral Agent and the Purchasers of such change at least 30 days prior to the date of such change, and (2) taken all action necessary and/or reasonably requested by the Collateral Agent or any other Secured Party for the purpose of maintaining the perfection and priority of the Collateral Agent's security interests under this Agreement, and unless such Grantor shall otherwise be in compliance with Section 7.3 of the Note Purchase Agreement. In any notice furnished pursuant to this Section, such Grantor will expressly state in a conspicuous manner that the notice is required by this Agreement and contains facts that may require additional filings of financing statements or other notices for the purposes of continuing perfection of the Collateral Agent's security interest in the Collateral.

Section 6.7 **Pledged Securities**.

(a) If such Grantor shall become entitled to receive or shall receive any Promissory Notes, stock certificate or other instrument (including, without limitation, any certificate or instrument representing a dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate or instrument issued in connection with any reorganization), option or rights in respect of the Capital Stock of any Pledged Security Issuer, whether in addition to, in substitution of, as a conversion of, or in exchange for, any shares (or such other interests) of the Pledged Securities, or otherwise in respect thereof, except as otherwise provided herein or in the Note Purchase Agreement, such Grantor shall accept the same for the benefit of the Collateral Agent, hold the same on behalf of and for the benefit of the Collateral Agent and deliver the same forthwith to the Collateral Agent in the exact form received, duly indorsed by such Grantor to the Collateral Agent, if required, together with an undated stock power or other equivalent instrument of transfer reasonably acceptable to the Collateral Agent and the Required Purchasers covering such certificate or instrument duly executed in blank by such Grantor and with, if the Collateral Agent so requests, signature guaranteed, to be held by the Collateral Agent, subject to the terms hereof, as additional collateral security for the Secured Obligations.

(b) Without the prior written consent of the Required Purchasers, except to the extent permitted by the Note Purchase Agreement (or pursuant to or in connection with a transaction permitted by the Note Purchase Agreement), such Grantor will not (i) vote to enable, or take any other action to cause, any Pledged Security Issuer to issue any Capital Stock or to issue any other securities or interests convertible into or granting the right to purchase or exchange for any Capital Stock of any Pledged Security Issuer (unless such Grantor complies with the terms of the Note Documents with respect to any such additional issuance), (ii) sell, assign, transfer, exchange or otherwise dispose of, or grant any option with respect to, the Pledged Securities or Proceeds thereof, (iii) create, incur or permit to exist any Lien or option in favor of, or any claim of any Person with respect to, any of the Pledged Securities or Proceeds thereof, or any interest therein, or (iv) enter into any agreement or undertaking restricting the right or ability of such Grantor or the Collateral Agent to sell, assign or transfer any of the Pledged Securities or Proceeds thereof.

(c) In the case of each Grantor which is a Pledged Security Issuer, and each other Pledged Security Issuer that executes the Acknowledgment and Consent in the form of Annex III (which the applicable Grantor shall use its commercially reasonable efforts to obtain from each such other Pledged Security Issuer), such Pledged Security Issuer agrees that (i) it will be bound by the terms of this Agreement relating to the Pledged Securities issued by it and will comply with such terms insofar as such terms are applicable to it, (ii) it will notify the Collateral Agent promptly in writing of the occurrence of any of the events described in subsection (a) of this Section with respect to the Pledged Securities issued by it and (iii) the terms of Section 7.1(c) and Section 7.5 shall apply to it, *mutatis mutandis*, with respect to all actions that may be required of it pursuant to Section 7.1(c) or Section 7.5 with respect to the Pledged Securities issued by it.

(d) Such Grantor shall furnish to the Collateral Agent such powers and other equivalent instruments of transfer as may be reasonably required by the Collateral Agent or the Required Purchasers and/or is necessary to assure the transferability of and the perfection of the security interest in the Pledged Securities when and as often as may be reasonably requested by the Collateral Agent or the Required Purchasers.

(e) Each Grantor acknowledges and agrees that, to the extent any interest in any limited liability company or limited partnership constituting Pledged Securities hereunder is a "Security" within the meaning of Article 8 of the UCC and is governed by Article 8 of the UCC, such interest shall be represented by a certificate. Each Grantor further acknowledges and agrees that with respect to any interest in any limited liability company or limited partnership constituting Pledged Securities hereunder that is not a "Security" within the meaning of Article 8 of the UCC, such Grantor shall at no time elect to treat any such interest as a "Security" within the meaning of Article 8 of the UCC, unless such election and such interest is thereafter represented by a certificate that is promptly delivered to the Collateral Agent pursuant to the terms hereof.

(f) If any Grantor acquires any Capital Stock or Stock Equivalents that do not constitute Excluded Capital Stock or any Promissory Notes after executing this Agreement, such Capital Stock, Stock Equivalents and Promissory Notes shall automatically constitute Collateral and, upon the reasonable request of the Collateral Agent or the Required Purchasers, such Grantor shall promptly deliver a revised Schedule 2 which shall replace the then existing Schedule 2 to this Agreement.

Section 6.8 Limitations on Modifications, Waivers, Extensions of Agreements Giving Rise to Accounts. Such Grantor will not (i) amend, modify, terminate or waive any provision of any Chattel Paper, Instrument or any agreement giving rise to an Account or Payment Intangible comprising a portion of the Collateral, or (ii) fail to exercise promptly and diligently each and every right which it may have under any Chattel Paper, Instrument and each agreement giving rise to an Account or Payment Intangible comprising a portion of the Collateral (other than any right of termination), except where such action or failure to act, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 6.9 **Instruments and Tangible Chattel Paper**. If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any Instrument or Tangible Chattel Paper and the value of such Instruments and Tangible Chattel Paper in the aggregate is $1,000,000 or more, each such Instrument or Tangible Chattel Paper shall be delivered to the Collateral Agent as soon as practicable, duly endorsed in a manner reasonably satisfactory to the Collateral Agent and the Required Purchasers to be held as Collateral pursuant to this Agreement.

Section 6.10 **Copyrights, Patents and Trademarks**.

(a) Such Grantor (either itself or through licensees) will, except with respect to any Trademark that such Grantor shall reasonably determine is immaterial or as is permitted by Section 7.6 of the Note Purchase Agreement, (i) maintain as in the past the quality of services offered under such Trademark, (ii) maintain such Trademark in full force and effect, free from any claim of abandonment for non-use, (iii) employ such Trademark with the appropriate notice of registration, and (iv) not (and not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any Trademark may become abandoned or invalidated.

(b) Such Grantor will not, except with respect to any Patent that such Grantor shall reasonably determine is immaterial or as is permitted by Section 7.6 of the Note Purchase Agreement, do any act, or omit to do any act, whereby any Patent may become abandoned or dedicated.

(c) Such Grantor will not, except with respect to any Copyright that such Grantor shall reasonably determine is immaterial or as is permitted by Section 7.6 of the Note Purchase Agreement, do any act, or omit to do any act, whereby any Copyright may become abandoned or dedicated.

(d) Such Grantor will notify the Collateral Agent and the Purchasers promptly if it knows, or has reason to know, that any application or registration relating to any Copyright, Patent or Trademark may become abandoned, invalidated or dedicated (except with respect to any Copyright, Patent or Trademark that such Grantor shall reasonably determine is immaterial or as is permitted by Section 7.6 of the Note Purchase Agreement), or of any adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court or tribunal in any country) regarding such Grantor's ownership of any Copyright, Patent or Trademark or its right to register the same or to keep and maintain the same.

(e) Whenever a Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Copyright, Patent or Trademark with the United States Copyright Office, the United States Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof, such Grantor shall report such filing to the Collateral Agent and the Purchasers within five (5) Business Days after the last day of the fiscal quarter in which such filing occurs. Such Grantor shall within thirty (30) days execute and deliver an Intellectual Property Security Agreement substantially in the form of Annex II, and any and all other agreements, instruments, documents, and papers as are necessary to evidence the Collateral Agent's security interest in any such Copyright, Patent or Trademark and the goodwill and General Intangibles of such Grantor relating thereto or represented thereby.

(f) Such Grantor will take all reasonable and necessary steps, including, without limitation, in any proceeding before the United States Copyright Office, the United States Patent and Trademark Office, or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of the Copyrights, Patents and Trademarks, including, without limitation, filing of applications for renewal, affidavits of use and affidavits of incontestability.

(g) In the event that any Copyright, Patent or Trademark included in the Collateral is infringed, misappropriated or diluted by a third party, such Grantor shall promptly notify the Collateral Agent and the Purchasers after it learns thereof and shall, unless such Grantor shall reasonably determine that such Copyright, Patent or Trademark is immaterial to such Grantor, promptly take actions to remedy or address such infringement, misappropriation or dilution, including to seek injunctive relief where appropriate and to recover any and all damages for such infringement, misappropriation or dilution, or take such other actions as such Grantor shall reasonably deem appropriate under the circumstances to protect such Copyright, Patent or Trademark.

Section 6.11 **Commercial Tort Claims**. If such Grantor shall at any time hold or acquire a Commercial Tort Claim that satisfies the requirements of the following sentence, such Grantor shall, within 30 days after such Commercial Tort Claim satisfies such requirements, notify the Collateral Agent and the Purchasers in a writing signed by such Grantor containing a brief description thereof, and granting to the Collateral Agent (for the benefit of the Secured Parties) 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 and the Required Purchasers. The provisions of the preceding sentence shall apply only to a Commercial Tort Claim that satisfies the following requirements: (i) the monetary value claimed by or payable to the relevant Grantor in connection with such Commercial Tort Claim shall exceed $1,000,000, and (ii) either (A) such Grantor shall have filed a law suit or counterclaim or otherwise commenced legal proceedings (including, without limitation, arbitration proceedings) against the Person against whom such Commercial Tort Claim is made, or (B) such Grantor and the Person against whom such Commercial Tort Claim is asserted shall have entered into a settlement agreement with respect to such Commercial Tort Claim. In addition, to the extent that the existence of any Commercial Tort Claim held or acquired by any Grantor is disclosed by such Grantor in any public filing with the Securities Exchange Commission or any successor thereto or analogous Governmental Authority, or to the extent that the existence of any such Commercial Tort Claim is disclosed in any press release issued by any Grantor, then the relevant Grantor shall, within 30 days after such request is made, transmit to the Collateral Agent and the Purchasers a writing signed by such Grantor containing a brief description of such Commercial Tort Claim and granting to the Collateral Agent (for the benefit of the Secured Parties) 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 and the Required Purchasers.

ARTICLE VII

REMEDIAL PROVISIONS

Section 7.1 **Pledged Securities**.

(a) Unless an Event of Default shall have occurred and be continuing and the Collateral Agent (at the direction of the Required Purchasers) shall have given one (1) Business Day's prior written notice to the relevant Grantor of the Collateral Agent's intent to exercise its corresponding rights pursuant to subsection (b) of this Section, each Grantor shall be permitted to receive all cash dividends paid in respect of the Pledged Securities paid in the normal course of business of the relevant Pledged Security Issuer, to the extent permitted by the Note Purchase Agreement, and to exercise all voting and corporate rights with respect to the Pledged Securities.

(b) If an Event of Default shall occur and be continuing, then at any time in the Required Purchasers' discretion, upon one (1) Business Day's prior written notice to the relevant Grantor, (i) the Purchasers shall have the right to receive any and all cash dividends, payments or other Proceeds paid in respect of the Pledged Securities and make application thereof to the Obligations in accordance with Section 2.9(d) of the Note Purchase Agreement, and (ii) any or all of the Pledged Securities shall be registered in the name of the Collateral Agent or its nominee, and the Collateral Agent or its nominee (at the direction of the Required Purchasers) may thereafter exercise (x) all voting, corporate and other rights pertaining to such Pledged Securities at any meeting of shareholders (or other equivalent body) of the relevant Pledged Security Issuer or Pledged Security Issuers or otherwise and (y) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Pledged Securities as if it were the absolute owner thereof (including, without limitation, the right to exchange at its discretion any and all of the Pledged Securities upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the organizational structure of any Pledged Security Issuer, or upon the exercise by any Grantor or the Collateral Agent of any right, privilege or option pertaining to such Pledged Securities, and in connection therewith, the right to deposit and deliver any and all of the Pledged Securities with any committee, depositary, transfer agent, registrar or other designated agency upon such terms and conditions as the Collateral Agent (at the direction of the Required Purchasers) may determine), all without liability except to account for property actually received by it, but neither the Collateral Agent nor the Purchasers shall have any duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(c) Each Grantor hereby authorizes and instructs each Pledged Security Issuer of any Pledged Securities pledged by such Grantor hereunder (and each Pledged Security Issuer party hereto hereby agrees) to comply with any instruction received by it from the Collateral Agent in writing (including any instruction to pay any dividends or other payments with respect to such Pledged Securities directly to the Purchasers or the Collateral Agent, as applicable), in each case, (i) after an Event of Default has occurred and is continuing and (so long as the Purchasers have complied with the notice provisions of subsection (b) above) (ii) that is otherwise in accordance with the terms of this Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that each Pledged Security Issuer shall be fully protected in so complying.

(d) After the occurrence and during the continuance of an Event of Default, upon notice to the relevant Grantor, if the Pledged Security Issuer of any Pledged Securities is the subject of bankruptcy, insolvency, receivership, custodianship or other proceedings under the supervision of any Governmental Authority, then all rights of the Grantor in respect thereof to exercise the voting and other consensual rights which such Grantor would otherwise be entitled to exercise with respect to the Pledged Securities issued by such Pledged Security Issuer shall cease, and all such rights shall thereupon become vested in the Collateral Agent who shall thereupon have the sole right to exercise such voting and other consensual rights (at the direction of the Required Purchasers), but neither the Collateral Agent nor the Purchasers shall have any duty to exercise any such voting or other consensual rights and shall not be responsible for any failure to do so or delay in so doing.

Section 7.2 **Collections on Accounts**. The Collateral Agent hereby authorizes each Grantor to collect upon the Accounts, Instruments, Chattel Paper and Payment Intangibles until the occurrence and during the continuance of an Event of Default. Upon the request of the Collateral Agent or the Required Purchasers, at any time after the occurrence and during the continuance of an Event of Default, each Grantor shall notify the applicable Account Debtors that the applicable Accounts, Chattel Paper and Payment Intangibles have been assigned to the Collateral Agent for the ratable benefit of the Secured Parties and that payments in respect thereof shall be made directly to the Collateral Agent. Upon the occurrence of and during the continuance of an Event of Default, the Collateral Agent may in its own name or in the name of the applicable Grantor communicate with the applicable Account Debtors to verify with them to its satisfaction the existence, amount and terms of any applicable Accounts, Chattel Paper or Payment Intangibles; provided that the applicable Grantor shall have a reasonable opportunity to be present for or participate in any such communications between the Account Debtor and the Collateral Agent.

Section 7.3 **Proceeds**. If required by the Collateral Agent (at the direction of the Required Purchasers) at any time after the occurrence and during the continuance of an Event of Default, any payments of Accounts, Instruments, Chattel Paper and Payment Intangibles comprising a portion of the Collateral, when collected or received by each Grantor, and any other cash or non-cash Proceeds received by each Grantor upon the sale or other disposition of any Collateral, shall be forthwith (and, in any event, within two (2) Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Collateral Agent in a special collateral account maintained by the Collateral Agent subject to withdrawal by the Collateral Agent for the ratable benefit of the Secured Parties only, as hereinafter provided, and, until so turned over, shall be held by such Grantor on behalf of and for the benefit of the Collateral Agent for the ratable benefit of the Secured Parties segregated from other funds of any such Grantor. Each deposit of any such Proceeds shall be accompanied by a report identifying in detail the nature and source of the payments included in the deposit. All Proceeds of the Collateral (including, without limitation, Proceeds constituting collections of Accounts, Chattel Paper, Instruments or Payment Intangibles comprising a portion of the Collateral) while held by the Collateral Agent (or by any Grantor on behalf of and for the benefit of the Collateral Agent for the ratable benefit of the Secured Parties) shall continue to be collateral security for all of the Secured Obligations and shall not constitute payment thereof until applied as hereinafter provided. At such intervals as may be agreed upon by each Grantor and the Collateral Agent (at the direction of the Required Purchasers), or, if an Event of Default shall have occurred and be continuing, at any time at the Collateral Agent's (at the direction of the Required Purchasers) election, the Collateral Agent shall apply all or any part of the Proceeds on deposit in said special collateral account on account of the Secured Obligations in the order set forth in Section 8.2 of the Note Purchase Agreement, and any part of such Proceeds which the Collateral Agent elects not so to apply and deems not required as collateral security for the Secured Obligations shall be paid over from time to time by the Collateral Agent to each Grantor or to whomsoever may be lawfully entitled to receive the same. After an Event of Default specified in Section 8.1(g) or 8.1(h) of the Note Purchase Agreement, any expenses incurred or services rendered by the Collateral Agent or any Purchaser in connection therewith (including the reasonable expenses of its counsel) shall constitute expenses of administration under the Bankruptcy Code.

Section 7.4 **UCC and Other Remedies**.

(a) If an Event of Default shall occur and be continuing, the Collateral Agent, on behalf of the Secured Parties, may exercise (at the direction of the Required Purchasers), in addition to all other rights, remedies, powers and privileges granted to them in this Agreement, the other Note Documents, and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations, all rights, remedies, powers and privileges of a secured party under the UCC (regardless of whether the UCC is in effect in the jurisdiction where such rights, remedies, powers or privileges are asserted) or any other applicable law or otherwise available at law or equity. Without limiting the generality of the foregoing, the Collateral Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below or required by the Note Documents) to or upon any Grantor or any other Person (all and each of which demands, presentments, protests, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of the Collateral Agent or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Collateral Agent shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. If an Event of Default shall occur and be continuing, each Grantor further agrees, at the Collateral Agent's request (at the direction of the Required Purchasers), to assemble the Collateral and make it available to the Collateral Agent at places which the Collateral Agent shall reasonably select, whether at such Grantor's premises or elsewhere. Any such sale or transfer by the Collateral Agent either to itself or to any other Person shall be absolutely free from any claim of right by any Grantor, including any equity or right of redemption, stay or appraisal which such Grantor has or may have under any rule of law, regulation or statute now existing or hereafter adopted. Upon any such sale or transfer, the Collateral Agent shall have the right to deliver, assign and transfer to the purchaser or transferee thereof the Collateral so sold or transferred. The Collateral Agent shall apply the net proceeds of any action taken by it pursuant to this Section, after deducting all documented out-of-pocket costs, fees and expenses incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Collateral Agent hereunder, including, without limitation, documented out-of-pocket attorneys' fees and disbursements, to the payment in whole or in part of the Obligations, in accordance with Section 8.2 of the Note Purchase Agreement, and only after such application and after the payment by the Collateral Agent of any other amount required by any provision of law, including, without limitation, Section 9-615 of the UCC, need the Collateral Agent account for the surplus, if any, to any Grantor. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against the Collateral Agent arising out of the exercise by them of any rights hereunder. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition.

(b) In the event that the Collateral Agent elects not to sell the Collateral, the Collateral Agent retains its rights to dispose of or utilize the Collateral or any part or parts thereof in any manner authorized or permitted by law or in equity and to apply the proceeds of the same towards payment of the Secured Obligations. Each and every method of disposition of the Collateral described in this Agreement shall constitute disposition in a commercially reasonable manner. The Collateral Agent may appoint any Person as agent to perform any act or acts necessary or incident to any sale or transfer of the Collateral.

Section 7.5 **Private Sales of Pledged Securities**. Each Grantor recognizes that the Collateral Agent may be unable to effect a public sale of any or all the Pledged Securities, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Collateral Agent shall be under no obligation to delay a sale of any of the Pledged Securities for the period of time necessary to permit the Pledged Security Issuer thereof to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if such Pledged Security Issuer would agree to do so. Each Grantor agrees to use its best efforts to do or cause to be done all such other acts as may reasonably be necessary to make such sale or sales of all or any portion of the Pledged Securities pursuant to this Section valid and binding and in compliance with any and all other applicable Requirements of Law. Each Grantor further agrees that a breach of any of the covenants of such Grantor contained in this Section will cause irreparable injury to the Collateral Agent and the 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 shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants.

Section 7.6 **Deficiency**. Each Grantor shall remain jointly and severally liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay its Obligations or Guaranteed Obligations, as the case may be, and the documented out-of-pocket fees and disbursements of any attorneys employed by the Collateral Agent or any other Secured Party to collect such deficiency.

Section 7.7 **Non-Judicial Enforcement**. The Collateral Agent may enforce its rights hereunder without prior judicial process or judicial hearing, and, to the extent permitted by law, each Grantor expressly waives any and all legal rights which might otherwise require the Collateral Agent to enforce its rights by judicial process (to the extent permitted to be waived by applicable law).

ARTICLE VIII

THE COLLATERAL AGENT

Section 8.1 **The Collateral Agent's Appointment as Attorney-in-Fact**.

(a) Each Grantor hereby irrevocably constitutes and appoints the Collateral Agent, after the occurrence and during the continuance of an Event of Default, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all reasonably appropriate action and to execute any and all documents and instruments which may be reasonably necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives the Collateral Agent the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, after the occurrence and during the continuance of an Event of Default, to do any or all of the following:

(i) pay or discharge Taxes and Liens levied or placed on or threatened against the Collateral, effect any repairs or any insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(ii) execute, in connection with any sale provided for in Section 7.4 or Section 7.5, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(iii) (A) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Collateral Agent or as the Collateral Agent shall direct; (B) take possession of and indorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Account, Instrument, General Intangible, Chattel Paper or Payment Intangible constituting Collateral or with respect to any other Collateral, and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Collateral Agent for the purpose of collecting any or all such moneys due under any Account, Instrument or General Intangible constituting Collateral or with respect to any other Collateral whenever payable; (C) ask or demand for, collect, and receive payment of and receipt for any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (D) sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (E) receive, change the address for delivery, open and dispose of mail addressed to any Grantor, and execute, assign and indorse negotiable and other instruments for the payment of money, documents of title or other evidences of payment, shipment or storage for any form of Collateral on behalf of and in the name of any Grantor; (F) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (G) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (H) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Collateral Agent (at the reasonable direction of the Required Purchasers) or the Required Purchasers may deem appropriate; (I) assign any Patent or Trademark (along with the goodwill of the business to which any such Trademark pertains) throughout the world for such term or terms, on such conditions, and in such manner as the Required Purchasers shall in their sole discretion determine; and (J) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes, and do, at the Collateral Agent's option (at the direction of the Required Purchasers) and such Grantor's expense, at any time, or from time to time, all acts and things which the Collateral Agent (at the direction of the Required Purchasers) deems necessary to protect, preserve or realize upon the Collateral and the Collateral Agent's and the other Secured Parties' security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

Other than as required by Section 7.1, the Collateral Agent shall give the relevant Grantor notice of any action taken pursuant to this subsection when reasonably practicable; provided that the Collateral Agent shall have no liability for the failure to provide any such notice.

(b) If any Grantor fails to perform or comply with any of its agreements contained herein within the applicable grace periods, the Collateral Agent, at its option (at the direction of the Required Purchasers), but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement, in accordance with the terms hereof.

(c) The documented out-of-pocket fees and expenses of the Collateral Agent incurred in connection with actions undertaken as provided in this Section shall be payable by such Grantor to the Collateral Agent on demand.

(d) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof and in compliance herewith, subject in all respects to the terms hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

Section 8.2 **Duty of the Collateral Agent**. The Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the UCC or otherwise, shall be to deal with it in the same manner as the Collateral Agent deals with similar property and the Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which comparable secured parties accord comparable collateral. Neither the Collateral Agent, any other Secured Party nor any of their respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Collateral Agent hereunder are solely to protect the Collateral Agent's and the other Secured Parties' interests in the Collateral and shall not impose any duty upon the Collateral Agent to exercise any such powers. The Collateral Agent and the other Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except, with respect to any Secured Party, as determined by a court of competent jurisdiction in a final and non-appealable judgment to have resulted from (a) its own gross negligence or willful misconduct or (b) other than with respect to the Collateral Agent and its officers, directors, employees and agents, a material breach by such Secured Party of any of its undertakings, obligations or commitments under this Agreement or any other Note Document. To the fullest extent permitted by applicable law and except as required by this Agreement, the Collateral Agent shall be under no duty whatsoever to make or give any presentment, notice of dishonor, protest, demand for performance, notice of non-performance, notice of intent to accelerate, notice of acceleration, or other notice or demand in connection with any Collateral, or to take any steps necessary to preserve any rights against any Grantor or other Person or ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral, whether or not it has or is deemed to have knowledge of such matters. Each Grantor, to the extent permitted by applicable law, waives any right of marshaling in respect of any and all Collateral, and waives any right to require the Collateral Agent or any other Secured Party to proceed against any Grantor or other Person, exhaust any Collateral or enforce any other remedy which the Collateral Agent or any other Secured Party now has or may hereafter have against any Grantor or other Person.

Section 8.3 **Filing of Financing Statements**. Pursuant to the UCC and any other applicable law, each Grantor authorizes the Collateral Agent, its counsel or its representative, at any time and from time to time, to file or record financing statements, continuation statements, amendments thereto and other filing or recording documents or instruments with respect to the Collateral without the signature of such Grantor in such form and in such offices as the Collateral Agent reasonably determines appropriate to perfect the security interests of the Collateral Agent under this Agreement. Additionally, each Grantor authorizes the Collateral Agent, its counsel or its representative, at any time and from time to time, to file or record such financing statements that describe the collateral covered thereby as "all assets of the Grantor", "all personal property of the Grantor" or words of similar effect. A photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction. For the avoidance of doubt, nothing herein shall require the Collateral Agent to file financing statements, termination statements or continuation statements, or be responsible for maintaining the security interests purported to be created as described herein (except for the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder or under any other Note Documents) and such responsibility shall be solely that of the Note Parties; provided that, upon the written direction of the Required Purchasers, the Collateral Agent shall file financing statements, termination statements or continuation statements.

Section 8.4 **Authority of the Collateral Agent**. Each Grantor acknowledges that the rights and responsibilities of the Collateral Agent under this Agreement with respect to any action taken by the Collateral Agent or the exercise or non-exercise by the Collateral Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Collateral Agent and the other Secured Parties, be governed by the Note Purchase Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Collateral Agent and the Grantors, the Collateral Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

ARTICLE IX

SUBORDINATION OF INDEBTEDNESS

Section 9.1 **Subordination of All Guarantor Claims**. As used herein, the term "Guarantor Claims" shall mean all debts and obligations of the Issuer or any Grantor owing to any other Grantor, whether such debts and obligations now exist or are hereafter incurred or arise, or whether the obligation of the debtor thereon be direct, contingent, primary, secondary, several, joint and several, or otherwise, and irrespective of whether such debts or obligations be evidenced by note, contract, open account, or otherwise, and irrespective of the manner in which they have been or may hereafter be acquired. After the occurrence and during the continuation of an Event of Default, no Grantor shall receive or collect, directly or indirectly, from any obligor in respect thereof any amount on account of the Guarantor Claims.

Section 9.2 **Claims in Bankruptcy**. In the event of receivership, bankruptcy, reorganization, arrangement, debtor's relief or other insolvency proceedings involving any Grantor, the Collateral Agent on behalf of the Secured Parties shall have the right to prove their claim in any proceeding, so as to establish their rights hereunder and receive directly from the receiver, trustee or other court custodian payments which would otherwise be payable upon the Guarantor Claims. After the occurrence and during the continuance of an Event of Default, each Grantor hereby assigns such payments to the Collateral Agent for the benefit of the Secured Parties for application against the Secured Obligations as provided under Section 8.2 of the Note Purchase Agreement. Should the Collateral Agent or any other Secured Party receive, for application upon the Secured Obligations, any such payment which is otherwise payable to any Grantor, and which, as between such Grantor, shall constitute a credit upon the Guarantor Claims, then upon payment in full of the Secured Obligations (other than Hedging Obligations owed by any Note Party to any Purchaser-Related Hedge Provider, Bank Product Obligations, and indemnities and other contingent obligations not then due and payable and as to which no claim has been made) and termination of all Commitments, the intended recipient shall become subrogated to the rights of the Collateral Agent and the other Secured Parties to the extent that such payments to the Collateral Agent and the other Secured Parties on the Guarantor Claims have contributed toward the liquidation of the Secured Obligations, and such subrogation shall be with respect to that proportion of the Secured Obligations which would have been unpaid if the Collateral Agent and the other Secured Parties had not received payments upon the Guarantor Claims.

Section 9.3 **Payments Held for Benefit of Collateral Agent**. In the event that, notwithstanding Section 9.1 and Section 9.2, any Grantor should receive any funds, payments, claims or distributions which are prohibited by such Sections, then it agrees (a) to hold on behalf of and for the benefit of the Collateral Agent and the other Secured Parties an amount equal to the amount of all funds, payments, claims or distributions so received, (b) that it shall have absolutely no dominion over the amount of such funds, payments, claims or distributions except to pay them promptly to the Collateral Agent for the benefit of the Secured Parties, and (c) to promptly pay the same to the Collateral Agent for the benefit of the Secured Parties.

Section 9.4 **Liens Subordinate**. Each Grantor agrees that, until the Termination Date, any Liens securing payment of the Guarantor Claims shall be and remain inferior and subordinate to any Liens securing payment of the Secured Obligations, regardless of whether such encumbrances in favor of such Grantor, the Collateral Agent or any other Secured Party presently exist or are hereafter created or attach. Without the prior written consent of the Collateral Agent (at the direction of the Required Purchasers), until the Termination Date, no Grantor shall (a) exercise or enforce any creditor's right it may have against any debtor in respect of the Guarantor Claims, or (b) foreclose, repossess, sequester or otherwise take steps or institute any action or proceeding (judicial or otherwise, including, without limitation, the commencement of or joinder in any liquidation, bankruptcy, rearrangement, debtor's relief or insolvency proceeding) to enforce any Lien held by it.

Section 9.5 **Notation of Records**. Upon the request of the Collateral Agent (at the direction of the Required Purchasers), all promissory notes and all accounts receivable ledgers or other evidence of the Guarantor Claims accepted by or held by any Grantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under the terms of this Agreement.

ARTICLE X

MISCELLANEOUS

Section 10.1 **Waiver**. No failure on the part of the Collateral Agent or any other Secured Party to exercise and no delay by any such Person in exercising, and no course of dealing with respect to, any right, remedy, power or privilege under any of the Note Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy power or privilege under any of the Note Documents preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided herein are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. The exercise by the Collateral Agent of any one or more of the rights, powers and remedies herein shall not be construed as a waiver of any other rights, powers and remedies, including, without limitation, any rights of set-off.

Section 10.2 **Notices**. All notices and other communications provided for herein shall be given in the manner and subject to the terms of Section 10.1 of the Note Purchase Agreement; provided that any such notice, request or demand to or upon any Guarantor shall be addressed to such Guarantor at its notice address set forth on Schedule 1.

Section 10.3 **Payment of Expenses, Indemnities**.

(a) Each Grantor agrees to pay or promptly reimburse the Collateral Agent and each other Secured Party for all documented fees, advances, charges, costs and expenses (including, without limitation, all documented costs and expenses of holding, preparing for sale and selling, collecting or otherwise realizing upon the Collateral and all documented fees, disbursements, and expenses of one outside counsel to each such party (and any required special or local counsel to each such party) and court costs) incurred by any Secured Party in connection with the enforcement or protection of its rights in connection with this Agreement, including, without limitation, in connection with (i) the preservation of the Lien of, or the rights of the Collateral Agent or any other Secured Party under, this Agreement, (ii) any actual or attempted sale, lease, disposition, exchange, collection, compromise, settlement or other realization in respect of, or care of, the Collateral, including all such costs and expenses incurred in any bankruptcy, reorganization, workout or other similar proceeding, or (iii) collecting against such Grantor under the guarantee contained in Article II or otherwise enforcing or preserving any rights under this Agreement and the other Note Documents to which such Grantor is a party.

(b) Each Grantor shall, jointly and severally, indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and expenses (including the fees, disbursements, and expenses of any counsel for any Indemnitee), and shall reimburse each Indemnitee upon demand for any legal or other expenses incurred in connection with investigating or defending any of the following, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Grantor or any of their Subsidiaries or Affiliates arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, the performance by the parties hereto of their respective obligations hereunder or the consummation of the transactions contemplated hereby, (ii) the Collateral (including any exercise of rights or remedies in connection therewith), or (iii) any actual or prospective suit, claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Grantor or any Grantor's equity holders, Affiliates or creditors, and regardless of whether any Indemnitee or such Grantor 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 other expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from (x) the gross negligence or willful misconduct of such Indemnitee or (y) other than with respect to the Collateral Agent and its Related Parties, a material breach by such Indemnitee of any of its undertakings, obligations or commitments under this Agreement.

(c) To the extent permitted by applicable law, the Grantors shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to actual or direct damages) arising out of, in connection with or as a result of this Agreement, any other Note Document or any agreement or instrument contemplated hereby, the transactions contemplated therein.

(d) All amounts for which any Grantor is liable pursuant to this Section shall be due and payable by such Grantor to the Collateral Agent or any Secured Party upon demand.

Section 10.4 **Amendments in Writing**. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 10.2 of the Note Purchase Agreement.

Section 10.5 **Successors and Assigns**. This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of the Collateral Agent and the other Secured Parties and their respective successors and permitted assigns; provided that no Grantor may assign, transfer or delegate any of its rights or Secured Obligations under this Agreement without the prior written consent of the Collateral Agent and the Purchasers.

Section 10.6 **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 10.7 **Counterparts**. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed counterpart to this Agreement by facsimile transmission or by electronic mail in pdf format shall be as effective as delivery of a manually executed counterpart hereof.

Section 10.8 **Survival**. The obligations of the parties under Section 10.3 shall survive the repayment of the Secured Obligations and the termination of the Note Purchase Agreement, the Commitments, the Hedging Obligations and the Bank Product Obligations and, as applicable, removal or resignation of the Collateral Agent under the Note Documents. To the extent that any payments on the Secured Obligations or proceeds of any Collateral are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver or other Person under any bankruptcy law, common law or equitable cause, then, to such extent, the Secured Obligations so satisfied shall be revived and continue as if such payment or proceeds had not been received and the Collateral Agent's and the other Secured Parties' Liens, security interests, rights, powers and remedies under this Agreement and each other applicable Collateral Document shall continue in full force and effect. In such event, each applicable Collateral Document shall be automatically reinstated and each Grantor shall take such action as may be reasonably requested by the Collateral Agent and the other Secured Parties to effect such reinstatement.

Section 10.9 **Captions**. Captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

Section 10.10 **No Oral Agreements**. The Note Documents embody the entire agreement and understanding between the parties and supersede all other agreements and understandings between such parties relating to the subject matter hereof and thereof. The Note Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 10.11 **Governing Law; Submission to Jurisdiction**.

(a) This Agreement and the other Note Documents any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Note Document (except, as to any other Note Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be construed in accordance with and be governed by the law of the State of New York.

(b) Each Grantor hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court for the Southern District of New York, and of the Supreme Court of the State of New York sitting in New York county, and of any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Note Document or the transactions contemplated hereby or thereby, 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 District Court or such New York state court or, to the extent permitted by applicable law, such appellate 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 Note Document shall affect any right that the Collateral Agent or any Purchaser may otherwise have to bring any action or proceeding relating to this Agreement or any other Note Document against the Issuer or its properties in the courts of any jurisdiction.

(c) Each Grantor irrevocably and unconditionally waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding described in subsection (b) of this Section and brought in any court referred to in subsection (b) of this Section. Each of the parties hereto irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to the service of process in the manner provided for notices in Section 10.2. Nothing in this Agreement or in any other Note Document will affect the right of any party hereto to serve process in any other manner permitted by law.

Section 10.12 **WAIVER OF JURY TRIAL**. EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF THIS AGREEMENT OR ANY OTHER NOTE DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER 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 AND THE OTHER NOTE DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.13 **Acknowledgments**.

(a) Each Grantor hereby acknowledges that:

(i) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Note Documents to which it is a party;

(ii) neither the Collateral Agent nor any other Secured Party has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement or any of the other Note Documents, and the relationship between the Grantors, on the one hand, and the Collateral Agent and the other Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(iii) no joint venture is created hereby or by the other Note Documents or otherwise exists by virtue of the transactions contemplated hereby among the Secured Parties or among the Grantors and the Purchasers.

(b) Each of the parties hereto specifically agrees that it has a duty to read this Agreement and the other Note Documents to which it is a party and agrees that it is charged with notice and knowledge of the terms of this Agreement and the other Note Documents to which it is a party; that it has in fact read this Agreement and the other Note Documents to which it is a party and is fully informed and has full notice and knowledge of the terms, conditions and effects of this Agreement and the other Note Documents to which it is a party; that it has been represented by independent legal counsel of its choice throughout the negotiations preceding its execution of this Agreement and the other Note Documents to which it is party; and has received the advice of its attorney in entering into this Agreement and the other Note Documents to which it is a party; and that it recognizes that certain of the terms of this Agreement and other Note Documents to which it is a party result in one party assuming the liability inherent in some aspects of the transaction and relieving the other party of its responsibility for such liability. Each Grantor agrees and covenants that it will not contest the validity or enforceability of any exculpatory provision of this Agreement or the other Note Documents to which it is a party on the basis that such Grantor had no notice or knowledge of such provision or that the provision is not “conspicuous”.

(c) Each Grantor warrants and agrees that each of the waivers and consents set forth in this Agreement are made voluntarily and unconditionally after consultation with outside legal counsel and with full knowledge of their significance and consequences, with the understanding that events giving rise to any defense or right waived may diminish, destroy or otherwise adversely affect rights which such Grantor otherwise may have against any other Grantor, the Collateral Agent, the other Secured Parties or any other Person or against any Collateral. If, notwithstanding the intent of the parties that the terms of this Agreement shall control in any and all circumstances, any such waivers or consents are determined to be unenforceable under applicable law, such waivers and consents shall be effective to the maximum extent permitted by law.

Section 10.14 **Additional Grantors**. Each Person that is required to become a party to this Agreement pursuant to Section 5.12 of the Note Purchase Agreement and is not a signatory hereto shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Person of a Joinder Agreement in the form of Annex I.

Section 10.15 **Set-Off**. Each Grantor agrees that, in addition to (and without limitation of) any right of set-off, bankers' lien or counterclaim a Secured Party may otherwise have, each Secured Party shall have the right and be entitled, at its option, to offset (i) balances held by it or by any of its Affiliates (or any other Secured Party) for account of any Grantor or any of its Subsidiaries at any of its offices, in dollars or in any other currency, and (ii) Obligations then due and payable to such Secured Party (or any Affiliate of such Secured Party), which are not paid when due, in which case it shall promptly notify the Issuer and the Collateral Agent thereof, provided that such Secured Party's failure to give such notice shall not affect the validity thereof.

Section 10.16 **Releases**.

(a) Release Upon Payment in Full. Upon the indefeasible complete payment in full of all Secured Obligations (other than Hedging Obligations owed by any Note Party to any Purchaser-Related Hedge Provider, Bank Product Obligations, indemnities and other contingent obligations not then due and payable and as to which no claim has been made) in cash and the termination of the Note Purchase Agreement, and all Commitments thereunder (the "Termination Date"), this Agreement shall be of no further force and effect and the Collateral Agent, at the written request and expense of the Issuer, and written direction of the Required Purchasers, shall promptly execute and deliver to such Grantor all releases or other documents and reassign, release, transfer or deliver the Collateral then in the possession of the Collateral Agent to the Grantors, without recourse, representation, warranty or other assurance of any kind.

(b) Further Assurances. If any of the Collateral shall be sold, transferred or otherwise disposed of by any Grantor in a transaction permitted by the Note Purchase Agreement, then the Collateral Agent, at the request and sole expense of such Grantor, shall promptly execute and deliver to such Grantor all releases or other documents reasonably necessary for the release of the Liens created hereby on such Collateral and the Capital Stock of such Grantor, made without recourse, representation, warranty or other assurance of any kind. At the request and sole expense of the Issuer, a Grantor shall be released from its obligations hereunder in the event that all the Capital Stock of such Grantor shall be sold, transferred or otherwise disposed of in a transaction permitted by the Note Purchase Agreement; provided that the Issuer shall have delivered to the Collateral Agent and the Purchasers, at least 10 Business Days prior to the date of the proposed release, a written request for release identifying the relevant Grantor and the terms of the sale or other disposition in reasonable detail, including the price thereof and any expenses in connection therewith, together with a certification by the Issuer stating that such transaction is in compliance with the Note Purchase Agreement and the other Note Documents.

(c) Retention in Satisfaction. Except as may be expressly applicable pursuant to Section 9-620 of the UCC, no action taken or omission to act by the Collateral Agent or the other Secured Parties hereunder, including, without limitation, any exercise of voting or consensual rights or any other action taken or inaction, shall be deemed to constitute a retention of the Collateral in satisfaction of the Secured Obligations or otherwise to be in full satisfaction of the Secured Obligations, and the Secured Obligations shall remain in full force and effect, until the Collateral Agent and the other Secured Parties shall have applied payments (including, without limitation, collections from Collateral) towards the Secured Obligations in the full amount then outstanding or until such subsequent time as is provided in subsection (a) of this Section.

Section 10.17 Reinstatement. The obligations of each Grantor under this Agreement (including, without limitation, with respect to the guarantee contained in Article II and the provision of collateral herein) shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored or returned by the Collateral Agent or any other Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Issuer or any other Grantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Issuer or any other Grantor or any substantial part of its property, or otherwise, all as though such payments had not been made.

Section 10.18 Acceptance. Each Grantor hereby expressly waives notice of acceptance of this Agreement, acceptance on the part of the Collateral Agent and the other Secured Parties being conclusively presumed by their request for this Agreement and delivery of the same to the Collateral Agent.

Section 10.19 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Note Party to honor all of such Note Party's obligations under its Guarantee under the Note Documents in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 10.19 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 10.19, or otherwise under its Guarantee, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 10.19 shall remain in full force and effect until termination of all Commitments and payment in full of all Obligations (other than any obligations or rights which according to the Note Purchase Agreement shall survive the termination of the Commitments). Each Qualified ECP Guarantor intends that this Section 10.19 constitute, and this Section 10.19 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Note Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

Section 10.20 Relation to Other Note Documents. The provisions of this Agreement shall be read and construed with the other Note Documents referred to below in the manner so indicated.

(a) Note Purchase Agreement. In the event of any conflict between any provision in this Agreement and a provision in the Note Purchase Agreement, such provision of the Note Purchase Agreement shall control.

(b) Intellectual Property Security Agreements. The provisions of any Intellectual Property Security Agreement are supplemental to the provisions of this Agreement, and nothing contained in any Intellectual Property Security Agreement shall limit any of the rights or remedies of Collateral Agent hereunder.

Section 10.21 **Intercreditor Agreement**. Notwithstanding anything herein to the contrary, each Grantor and the Collateral Agent (on behalf of each Secured Party) agrees that the Lien and security interest granted to the Collateral Agent pursuant to this Agreement and the exercise of any right or remedy by the Collateral Agent hereunder, after the execution and delivery thereof, are subject to the provisions of the First Lien/Second Lien Intercreditor Agreement, the ABDC Intercreditor Agreement and each other intercreditor agreement entered into by the Collateral Agent with respect to the Secured Obligations. In the event of any conflict between the terms of the First Lien/Second Lien Intercreditor Agreement, the ABDC Intercreditor Agreement or any other intercreditor agreement entered into by the Collateral Agent with respect to the Secured Obligations and the terms of this Agreement (other than Article II hereof), the terms of the First Lien/Second Lien Intercreditor Agreement, the ABDC Intercreditor Agreement or such other intercreditor agreement shall govern and control at any time that the First Lien/Second Lien Intercreditor Agreement, the ABDC Intercreditor Agreement or such other intercreditor agreement is in effect. Notwithstanding anything to the contrary contained herein, the Collateral Agent acknowledges and agrees that no Grantor shall be required to take or refrain from taking any action at the request of the Collateral Agent with respect to the Collateral if such action or inaction would be inconsistent with the terms of the ABDC Intercreditor Agreement or any other intercreditor agreement entered into by the Collateral Agent with respect to the Secured Obligations.

Section 10.22 **Collateral Agent Rights**. The Collateral Agent shall be entitled to all of the rights, protections, indemnities and immunities set forth in the Note Purchase Agreement as if set forth herein.

[THE REMAINDER OF THIS PAGE IS 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.

ISSUER:

BIOSCRIP, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

GUARANTORS:

APPLIED HEALTH CARE, LLC

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

BIOSCRIP INFUSION MANAGEMENT, LLC

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

BIOSCRIP INFUSION SERVICES, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

BIOSCRIP INFUSION SERVICES, LLC

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

BIOSCRIP MEDICAL SUPPLY SERVICES, LLC

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

BIOSCRIP NURSING SERVICES, LLC

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

BIOSCRIP PBM SERVICES, LLC

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

BIOSCRIP PHARMACY (NY), INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

BIOSCRIP PHARMACY, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

BIOSCRIP PHARMACY SERVICES, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

CHS HOLDINGS, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

BRADHURST SPECIALTY PHARMACY, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

DEACONESS ENTERPRISES, LLC

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

EAST GOSHEN PHARMACY, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

INFUCENTERS, LLC

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

INFUSCIENCE HHA, LLC

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

INFUSCIENCE SOUTH CAROLINA, LLC

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

INFUSION PARTNERS, LLC

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

INFUSION PARTNERS OF MELBOURNE, LLC

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

CHRONIMED, LLC

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

CRITICAL HOMECARE SOLUTIONS, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

DEACONESS HOMECARE, LLC

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

HOMECHOICE PARTNERS, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

INFUSAL PARTNERS

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

INFUSCIENCE, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

INFUSCIENCE SUB, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

INFUSION THERAPY SPECIALISTS, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

INFUSION PARTNERS OF BRUNSWICK, LLC

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

NATIONAL HEALTH INFUSION, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

INFUSION SOLUTIONS, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

NEW ENGLAND HOME THERAPIES, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

KNOXVILLE HOME THERAPIES, LLC

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

PROFESSIONAL HOME CARE SERVICES, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

NATURAL LIVING, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

SCOTT-WILSON, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

OPTION HEALTH, LTD.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

WILCOX MEDICAL, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

REGIONAL AMBULATORY DIAGNOSTICS, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

PHCS ACQUISITION CO, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

SPECIALTY PHARMA, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

NUTRI USA INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

Acknowledged and Agreed to as of the date hereof:

COLLATERAL AGENT:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: /s/ Michael Pinzon
Name: Michael Pinzon
Title: Vice President

ANNEX I

Form of Joinder Agreement

THIS JOINDER AGREEMENT, dated as of [_____] (this "Joinder Agreement"), is made by [*NAME OF NEW SUBSIDIARY*], a [_____] (the "Additional Grantor"), in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, as Collateral Agent (in such capacity, together with its successors and assigns, the "Collateral Agent") for the Secured Parties (as defined in the Guaranty and Security Agreement referred to below). All capitalized terms not defined herein shall have the meanings assigned to them in the Guaranty and Security Agreement.

WHEREAS, BioScrip, Inc., a Delaware corporation (the "Issuer") has entered into that certain First Lien Note Purchase Agreement dated as of June 29, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Note Purchase Agreement"), by and among the Issuer, the purchasers from time to time party thereto and the Collateral Agent, providing for, among other things, the issuance by the Issuer and the purchase by the Purchasers of the Notes, subject to the terms set forth therein;

WHEREAS, in connection with the Note Purchase Agreement, the Issuer and certain of its Subsidiaries have entered into that certain First Lien Guaranty and Security Agreement dated as of June 29, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Guaranty and Security Agreement"), in favor of the Collateral Agent for the benefit of the Secured Parties;

WHEREAS, the Note Purchase Agreement requires the Additional Grantor to become a party to the Guaranty and Security Agreement; and

WHEREAS, the Additional Grantor has agreed to execute and deliver this Joinder Agreement in order to become a party to the Guaranty and Security Agreement;

NOW, THEREFORE, it is agreed:

SECTION 1. **Guaranty and Security Agreement.** By executing and delivering this Joinder Agreement, the Additional Grantor, as provided in Section 10.14 of the Guaranty and Security Agreement, hereby becomes a party to the Guaranty and Security Agreement as a Grantor thereunder with the same force and effect as if originally named therein as a Grantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Grantor thereunder and hereby pledges and grants to the Collateral Agent, for the ratable benefit of the Secured Parties, a security interest in and lien on all right, title and interest of the Additional Grantor in all property of such Additional Grantor that constitutes Collateral, wherever located and whether now owned or at any time hereafter acquired by the Additional Grantor, or in which the Additional Grantor now has or at any time in the future may acquire any right, title or interest and whether now existing or hereafter coming into existence, as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations (other than any Excluded Swap Obligation with respect to such Grantor). The information set forth in Schedule A hereto is hereby added to the information set forth in Schedules 1 through 9 to the Guaranty and Security Agreement and the Additional Grantor represents and warrants that all information set forth on Schedule A is true, correct and complete in all respects as of the date hereof. The Additional Grantor hereby represents and warrants that each of the representations and warranties contained in Article V of the Guaranty and Security Agreement is true and correct in all material respects (or if already qualified by materiality or Material Adverse Effect, in all respects) on and as of the date hereof (after giving effect to this Joinder Agreement) as if made by such Additional Grantor on and as of the date hereof. Not in limitation of the foregoing, the Additional Grantor hereby confirms that by execution of this Joinder Agreement, it is jointly and severally liable with the other Guarantors for all Guaranteed Obligations (other than any Excluded Swap Obligation with respect to such Grantor), whether now existing or hereafter arising, in accordance with and subject to the terms of the Guaranty and Security Agreement. Each reference to a "Grantor" or a "Guarantor" in the Guaranty and Security Agreement shall be deemed to include the Additional Grantor.

SECTION 2. **Governing Law.** THIS JOINDER AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

SECTION 3. **Acknowledgement.** The Additional Grantor acknowledges and confirms that it has received a copy of the Note Purchase Agreement, the Guaranty and Security Agreement, and the other Note Documents and, in each case, all schedules and exhibits thereto.

SECTION 4. **Further Assurances.** The Additional Grantor agrees that at any time and from time to time, upon the written request of the Collateral Agent or the Required Purchasers, it will execute and deliver such further documents and do such further acts and things as the Collateral Agent or the Required Purchasers may reasonably request in order to effect the purposes of this Joinder Agreement in accordance with and subject to the terms of the Guaranty and Security Agreement.

SECTION 5. **Counterparts.** This Joinder Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Joinder Agreement by signing any such counterpart. Delivery of an executed counterpart to this Joinder Agreement by facsimile transmission or by electronic mail in pdf format shall be as effective as delivery of a manually executed counterpart hereof.

SECTION 6. **Note Document.** Except as expressly supplemented hereby, the Note Documents shall remain in full force and effect. For avoidance of doubt, the Additional Grantor and the Collateral Agent hereby acknowledge and agree that this Joinder Agreement is a Note Document.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the undersigned has caused this Joinder Agreement to be duly executed and delivered as of the date first above written.

[*NAME OF ADDITIONAL GRANTOR*]

By: _____
Name:
Title:

Acknowledged and Agreed to as of the date hereof:

COLLATERAL AGENT:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: _____
Name:
Title:

SCHEDULE A

Supplement to Schedules of
First Lien Guaranty and Security Agreement

Annex I

ANNEX II

Form of Intellectual Property Security Agreement (First Lien)

THIS [COPYRIGHT][PATENT][TRADEMARK] SECURITY AGREEMENT (FIRST LIEN), dated as of [_____] (this "Security Agreement"), is made by [*NAME OF GRANTOR*], a [_____] (the "Grantor"), in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, as collateral agent (in such capacity, together with its successors and assigns, the "Collateral Agent") for the Secured Parties (as defined in the Guaranty and Security Agreement referred to below).

WHEREAS, BioScrip, Inc., a Delaware corporation (the "Issuer") has entered into that certain First Lien Note Purchase Agreement dated as of June 29, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Note Purchase Agreement"), by and among the Issuer, the purchasers from time to time party thereto and the Collateral Agent, providing for, among other things, the issuance by the Issuer and the purchase by the Purchasers of the Notes, subject to the terms set forth therein;

WHEREAS, in connection with the Note Purchase Agreement, the Issuer and certain of its Subsidiaries have entered into that certain First Lien Guaranty and Security Agreement dated as of June 29, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Guaranty and Security Agreement"), in favor of the Collateral Agent for the benefit of the Secured Parties; and

WHEREAS, the Guaranty and Security Agreement requires the Grantor to execute and deliver this Security Agreement;

NOW, THEREFORE, in consideration of the premises and in order to ensure compliance with the Note Purchase Agreement, the Grantor hereby agrees as follows:

SECTION 1. **Defined Terms.** Capitalized terms used herein without definition are used as defined in the Guaranty and Security Agreement.

SECTION 2. **Grant of Security Interest in [Copyright][Patent][Trademark] Collateral.** The Grantor, as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations (other than any Excluded Swap Obligation with respect to such Grantor), hereby pledges and grants to the Collateral Agent, for the ratable benefit of the Secured Parties, a security interest in and lien on all right, title and interest of the Grantor in, to and under the following Collateral (in each case, other than Excluded Property) (the "[Copyright][Patent][Trademark] Collateral"):

[(a) all of its Copyrights and all Copyright Licenses;

(b) all renewals, reversions and extensions of the foregoing; and

(c) all income, royalties, proceeds and liabilities at any time due or payable or asserted under and with respect to any of the foregoing, including, without limitation, all rights to sue and recover at law or in equity for any past, present and future infringement, misappropriation, dilution, violation or other impairment thereof.]

[(a) all of its Patents and all Patent Licenses;

(b) all reissues, reexaminations, continuations, continuations-in-part, divisions, renewals and extensions of the foregoing; and

(c) all income, royalties, proceeds and liabilities at any time due or payable or asserted under and with respect to any of the foregoing, including, without limitation, all rights to sue and recover at law or in equity for any past, present and future infringement, misappropriation, dilution, violation or other impairment thereof.]

[(a) all of its Trademarks and all Trademark Licenses;

(b) all renewals and extensions of the foregoing;

(c) all goodwill of the business connected with the use of, and symbolized by, each such Trademark; and

(d) all income, royalties, proceeds and liabilities at any time due or payable or asserted under and with respect to any of the foregoing, including, without limitation, all rights to sue and recover at law or in equity for any past, present and future infringement, misappropriation, dilution, violation or other impairment thereof.]

As of the date of this Security Agreement, all of the Grantor's [Copyright][Patent][Trademark] Collateral is set forth on Schedule I hereto.

SECTION 3. **Guaranty and Security Agreement.** The security interest granted pursuant to this Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Guaranty and Security Agreement, and the Grantor hereby acknowledges and agrees that the rights and remedies of the Collateral Agent with respect to the security interest in the [Copyright][Patent][Trademark] Collateral made and granted hereby are more fully set forth in the Guaranty and Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event of any conflict or inconsistency between this Security Agreement and the Guaranty and Security Agreement (or any portion hereof or thereof), the terms of the Guaranty and Security Agreement shall prevail.

SECTION 4. **Termination.** This Security Agreement shall terminate and the Lien on and security interest in the [Copyright] [Patent] [Trademark] Collateral shall be released in accordance with Section 10.16 of the Guaranty and Security Agreement. Upon the termination of this Security Agreement, the Collateral Agent shall, at the sole cost and expense of the Note Parties, promptly execute all documents, make all filings and take all other actions reasonably requested by the Grantors to evidence and record the release of the Lien on and security interests in the [Copyright] [Patent] [Trademark] Collateral granted herein.

SECTION 5. **Grantor Remains Liable.** The Grantor hereby agrees that, anything herein to the contrary notwithstanding, the Grantor shall retain full and complete responsibility for the prosecution, defense, enforcement or any other necessary or desirable actions in connection with the [Copyright] [Patent][Trademark] Collateral subject to a security interest hereunder.

SECTION 6. **Governing Law.** THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

SECTION 7. **Counterparts.** This Security Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Security Agreement by signing any such counterpart. Delivery of an executed counterpart to this Security Agreement by facsimile transmission or by electronic mail in pdf format shall be as effective as delivery of a manually executed counterpart hereof.

SECTION 8. **Note Document.** For avoidance of doubt, the Grantor and the Collateral Agent hereby acknowledge and agree that this Security Agreement is a Note Document.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

[NAME OF GRANTOR]

By: _____
Name:
Title:

Acknowledged and Agreed to as of the date hereof:

COLLATERAL AGENT:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: _____
Name:
Title:

SCHEDULE I

[Copyrights][Patents][Trademarks] and [Copyright][Patent][Trademark] Licenses

I. REGISTERED [COPYRIGHTS][PATENTS][TRADEMARKS]

[Include registration number and date]

II. [COPYRIGHT][PATENT][TRADEMARK] APPLICATIONS

[Include application number and date]

III. [COPYRIGHT][PATENT][TRADEMARK] LICENSES

[Include complete legal description of agreement (name of agreement, parties and date)]

ANNEX III

Form of Acknowledgment and Consent

The undersigned hereby acknowledges receipt of a copy of that certain First Lien Guaranty and Security Agreement, dated as of June 29, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Agreement"), made by BIOSCRIP, INC., a Delaware corporation and the other Grantors party thereto for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION, as collateral agent (in such capacity, together with its successors and assigns, the "Collateral Agent"). The undersigned agrees for the benefit of the Collateral Agent and the Secured Parties defined therein as follows:

1. The undersigned will be bound by the terms of the Agreement relating to the Pledged Securities issued by the undersigned and will comply with such terms insofar as such terms are applicable to the undersigned.

2. The terms of Sections 7.1(c) and 7.5 of the Agreement shall apply to it, *mutatis mutandis*, with respect to all actions that may be required of it pursuant to Sections 7.1(c) or 7.5 of the Agreement with respect to the Pledged Securities issued by the undersigned.

[*NAME OF PLEDGED SECURITY ISSUER*]

By: _____
Name:
Title:

Address for Notices:
[_____]
[_____]
Attention: [_____]
Telecopy Number: [_____]

Exhibit 10.3

EXECUTION VERSION

SECOND LIEN NOTE PURCHASE AGREEMENT

dated as of June 29, 2017

among

BIOSCRIP, INC.,
as Issuer,

THE PURCHASERS FROM TIME TO TIME PARTY HERETO,

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Collateral Agent

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SECOND LIEN NOTE PURCHASE AGREEMENT

THIS SECOND LIEN NOTE PURCHASE AGREEMENT (this "Agreement") is made and entered into as of June 29, 2017, by and among BIOSCRIP, INC., a Delaware corporation (the "Issuer"), the several financial institutions and purchasers from time to time party hereto (the "Purchasers"), and Wells Fargo Bank, National Association, in its capacity as collateral agent for itself and the Purchasers (the "Collateral Agent").

WITNESSETH:

WHEREAS, the Issuer has agreed to issue, and the Purchasers have severally (and not jointly) agreed to purchase from the Issuer, (a) notes in the aggregate principal amount of $100,000,000 and (b) delayed draw notes in the aggregate principal amount of $10,000,000, in each case, upon and subject to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Issuer, the Purchasers and the Collateral Agent agree as follows:

ARTICLE I

DEFINITIONS; CONSTRUCTION

Section 1.1 Definitions. In addition to the other terms defined herein, the following terms used herein shall have the meanings herein specified (to be equally applicable to both the singular and plural forms of the terms defined):

"ABDC" shall mean AmerisourceBergen Drug Corporation, a Delaware corporation.

"ABDC Obligations" shall mean all obligations of the Note Parties or any of their Subsidiaries owing to ABDC under the ABDC Prime Vendor Agreement and any other agreement, instrument, certificate or other document pursuant to which any Note Party or any Subsidiary of a Note Party grants (or purports to grant) in favor of ABDC a security interest in or a Lien on any property of such Note Party or such Subsidiary now or at any time hereafter to secure such obligations.

"ABDC Intercreditor Agreement" shall mean that certain Intercreditor Agreement dated as of the Closing Date by and between the First Lien Collateral Agent, the Collateral Agent and ABDC, as amended, restated, supplemented or otherwise modified from time to time in accordance therewith and herewith.

"ABDC Lien" shall mean (a) initially, the Lien of ABDC on the Inventory and Accounts of the Issuer and its Subsidiaries 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 and (b) following the Issuer's compliance with Section 6 of Schedule 5.16, the Lien of ABDC on the Inventory acquired from ABDC pursuant to the ABDC Intercreditor Agreement and, in all events, subject to the provisions of the ABDC Intercreditor Agreement.

"ABDC Prime Vendor Agreement" shall mean that certain Prime Vendor Agreement dated as of July 1, 2009 by and among the Issuer and ABDC, as amended by that certain First Amendment dated as of March 25, 2010, that certain Second Amendment dated as of June 1, 2010, that certain Third Amendment dated as of August 1, 2010, that certain Fourth Amendment dated as of May 1, 2011, that certain Fifth Amendment dated as of January 1, 2012, that certain Sixth Amendment dated as of September 1, 2012, that certain Seventh Amendment dated as of December 1, 2012, and that certain Eighth Amendment dated as of April 1, 2013, and as the same may be further amended, restated, supplemented, waived, extended, refinanced, replaced or otherwise modified from time to time in a manner not prohibited by the ABDC Intercreditor Agreement.

"Account Control Agreement" shall mean any agreement by and among a Note Party, the Collateral Agent and a depositary bank or securities intermediary at which such Note Party maintains a Controlled Account, that, in each case, complies with all Requirements of Law and is otherwise in form and substance reasonably satisfactory to the Collateral Agent and the Required Purchasers.

"Accreditation" 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, Community Health Accreditation Program and URAC.

"Acquisition" shall mean (a) any Investment by the Issuer or any of its Subsidiaries in any other Person organized in the United States (with substantially all of the assets of such Person and its Subsidiaries located in the United States), pursuant to which such Person shall become a Subsidiary of the Issuer or any of its Subsidiaries or shall be merged with the Issuer or any of its Subsidiaries or (b) any acquisition by the Issuer or any of its Subsidiaries of the assets of any Person (other than a Subsidiary of the Issuer) that constitute all or substantially all of the assets of such Person or a division or business unit of such Person, whether through purchase, merger or other business combination or transaction (and substantially all of such assets, division or business unit are located in the United States). With respect to a determination of the amount of an Acquisition, such amount shall include all consideration (including the maximum amount of any earn-out or other deferred or contingent consideration and any Permitted Seller Financing in respect thereof) set forth in the applicable agreements governing such Acquisition as well as the principal amount of any Indebtedness assumed by any Note Party in connection therewith.

"Affiliate" shall mean, as to any Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Person; provided that the Purchasers shall be deemed not to be Affiliates of any Note Party. For the purposes of this definition, "Control" shall mean the power, directly or indirectly, to direct or cause the direction of the management and policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. For purposes of Section 7.7, "Control" shall also include the power, directly or indirectly, to vote 10% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of a Person. The terms "Controlled by" and "under common Control with" have the meanings correlative thereto.

"Anti-Corruption Law" shall mean any requirement of law related to bribery or anti-corruption, including the United States Foreign Corrupt Practices Act of 1977, as now and hereafter in effect, or any successor statute.

"Anti-Terrorism Law" shall mean any requirement of law related to money laundering or financing terrorism, including the Patriot Act, The Currency and Foreign Transactions Reporting Act (also known as the "Bank Secrecy Act", 31 U.S.C. §§5311-5330 and 12 U.S.C. §§1818(s), 1820(b) and 1951-1959), Trading With the Enemy Act (50 U.S.C. §1 et seq., as amended), Executive Order 13224 (effective September 24, 2001) and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended), in each case, as now and hereafter in effect, or any successor statutes.

"Applicable Funding Office" shall mean, with respect to any Purchaser, the office or offices of such Purchaser specified as its "Funding Office" beneath its name on the applicable signature page hereto, or such other office or offices of such Purchaser as it may from time to time notify the Issuer and the Collateral Agent.

"Applicable Margin" shall mean, as of any date, with respect to all Notes outstanding on such date, (a) if the Issuer elects the Cash Option, 8.25% *per annum* with respect to Base Rate Notes and 9.25% *per annum* with respect to Eurodollar Notes, (b) if the Issuer elects the PIK Option, 10.25% *per annum* with respect to Base Rate Notes and 11.25% *per annum* with respect to Eurodollar Notes and (c) if the Issuer elects the Cash/PIK Option, 9.25% *per annum* with respect to Base Rate Notes and 10.25% *per annum* with respect to Eurodollar Notes; provided that, if all or any portion of the First Lien Notes is subject to a Repricing Transaction, the Applicable Margin shall, in each case, be increased by the Increased Yield Amount with respect to such Repricing Transaction.

"Applicable Premium" shall mean the greater of (I) 4.0% of the principal amount of the Notes being prepaid or repaid, as applicable, and (II) the excess of (A) the present value of all remaining required interest payments to the third anniversary of the Closing Date (using (x) the LIBOR Rate that is determined for a one-month Interest Period commencing on the date of such prepayment and assuming such LIBOR Rate remains the same for the entire period from the date of such prepayment to the third anniversary of the Closing Date and (y) an Applicable Margin equal to 11.25% *per annum*) and principal payments due on the principal amount of the Notes being prepaid or repaid, as applicable, plus the Prepayment Premium provided for pursuant to clause (b) of the definition of Prepayment Premium on such principal amount being prepaid or repaid, as applicable, in each case assuming a prepayment date of the third anniversary of the Closing Date, computed using a discount rate equal to the Treasury Rate plus 50 basis points over (B) the principal amount of the Notes being prepaid or repaid, as applicable. For purposes of this definition, "Treasury Rate" means the rate per annum equal to the yield to maturity at the time of computation of the United States of America Treasury securities with a constant maturity most nearly equal to the period from such date of prepayment or repayment, as applicable, to the third anniversary of the Closing Date; provided, however, that if the period from such date of prepayment or repayment, as applicable, to the third anniversary of the Closing Date is not equal to the constant maturity of a United States of America Treasury security for which a weekly average yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States of America Treasury securities for which such yields are given, except that if the period from such date of prepayment or repayment, as applicable, to the third anniversary of the Closing Date is less than one year, the weekly average yield on actually traded United States of America Treasury securities adjusted to a constant maturity of one year shall be used.

"Approved Fund" shall mean any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (i) a Purchaser, (ii) an Affiliate of a Purchaser or (iii) an entity or an Affiliate of an entity that administers or manages a Purchaser.

"Assignment and Assumption" shall mean an assignment and assumption entered into by a Purchaser and an assignee (with the consent of any party whose consent is required by Section 10.4(b)), substantially in the form of Exhibit A attached hereto or any other form approved by the Required Purchasers.

"Available Amount" shall mean, at any time (the "Reference Date") an amount, not less than zero, equal to the sum of (a) the cumulative portion of Excess Cash Flow for the period commencing on the Closing Date and ending on the Reference Date which has not been and is not required to be used to prepay the Obligations pursuant to Section 2.9(c) or the First Lien Obligations pursuant to Section 2.9(c) of the First Lien Note Purchase Agreement minus (b) the aggregate amount of any cash dividends, distributions, and share repurchases made by the Issuer pursuant to Section 7.5(g) after the Closing Date and prior to the Reference Date.

"Bail-In Action" shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"Bail-In Legislation" shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Base Rate" shall mean, for any day, a floating rate per annum equal to the greater of (x) the higher of (i) the per annum rate publicly quoted from time to time by The Wall Street Journal as the "Prime Rate" in the United States (or, if The Wall Street Journal ceases quoting a base rate of the type described, either (a) the per annum rate quoted as the base rate on such corporate loans in a different national publication as selected by the Required Purchasers or (b) the highest per annum rate of interest published by the Federal Reserve Board in Federal Reserve statistical release H.15 (519) entitled "Selected Interest Rates" as the Bank prime loan rate or its equivalent), and (ii) the Federal Funds Rate plus fifty (50) basis points per annum; provided that if the Federal Funds Rate is less than zero on such day, it shall be deemed to be zero hereunder, and (y) the sum of the LIBOR Rate calculated for each such day based on an Interest Period of one (1) month determined two (2) Business Days prior to the first day of such proposed Interest Period (not to be less than 1.25%) plus 1.00% per annum. Each change in any interest rate based upon the Base Rate shall take effect at the time of such change in the Base Rate.

"Beneficial Owner" shall mean, with respect to any amount paid hereunder or under any other Note Document, the Person that is the beneficial owner, for U.S. federal income tax purposes, of such payment.

"BioScrip Facilities" shall mean any facility owned, leased or operated by the Issuer or any of its Subsidiaries.

"Business Day" shall mean any day other than (i) a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close and (ii) if such day relates to an Issuance of, a payment or prepayment of principal or interest on, a conversion of or into, or an Interest Period for, a Eurodollar Note or a notice with respect to any of the foregoing, any day on which banks are not open for dealings in Dollar deposits in the London interbank market.

"Capital Expenditures" shall mean, for any period, without duplication, (i) the additions to property, plant and equipment and other capital expenditures of the Issuer and its Subsidiaries that are (or would be) set forth on a consolidated statement of cash flows of the Issuer for such period prepared in accordance with GAAP and (ii) Capital Lease Obligations incurred by the Issuer and its Subsidiaries during such period.

"Capital Lease Obligations" of any Person shall mean all obligations of such Person to pay rent or other amounts under any lease (or other arrangement conveying the right to use) of 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 Stock" shall mean all shares, options, warrants, general or limited partnership interests, membership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or nonvoting, including common stock, preferred stock or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Exchange Act).

"Cash Equivalents" shall mean (i) direct obligations issued by, or unconditionally guaranteed by, the United States government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition; (ii) certificates of deposit, time deposits, eurodollar time deposits or overnight bank deposits having maturities of one year or less from the date of acquisition issued by any commercial bank organized under the laws of the United States or any state thereof having combined capital and surplus of not less than $500,000,000; (iii) commercial paper of an issuer rated at least A-1 by S&P or P-1 by Moody's, or carrying an equivalent rating by a nationally recognized rating agency if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within one year from the date of acquisition; (iv) fully collateralized repurchase obligations of any commercial bank satisfying the requirements of clause (ii) of this definition, having a term of not more than thirty days with respect to securities issued or fully guaranteed or insured by the United States government; (v) marketable securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory, the securities of which state, commonwealth, territory, political subdivision or taxing authority (as the case may be) are rated at least A-1 by S&P or P-1 by Moody's; (vi) securities with maturities of one year or less from the date of acquisition backed by standby letters of credit issued by any Purchaser or any commercial bank satisfying the requirements of clause (ii) of this definition; (vii) shares of money market mutual or similar funds which invest exclusively in assets satisfying the requirements of any of clauses (i) through (vi) of this definition; and (viii) other short-term investments utilized by Foreign Subsidiaries in accordance with the normal investment practices for cash management in investments of a type analogous to the foregoing.

"Cash Option" shall have the meaning set forth in Section 2.10(a).

"Cash/PIK Election Notice" shall have the meaning set forth in Section 2.10(a).

"Cash/PIK Option" shall have the meaning set forth in Section 2.10(a).

"CFC Subsidiary" shall mean any Subsidiary of the Issuer that is organized under the laws of the United States or any state or district thereof and substantially all of the assets of which consist (directly, or indirectly through one or more disregarded entities) of Capital Stock of one or more Subsidiaries of the Issuer organized under the laws of a jurisdiction other than the United States or any state or district thereof.

"Change in Control" shall mean the occurrence of one or more of the following events: (i) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or "group" (within the meaning of the Exchange Act and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof, but excluding any employee benefit plan of such person or its subsidiaries, or any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of such plan) of 35% or more of the outstanding shares of the voting equity interests (with equivalent economic interests) of the Issuer; (ii) during any period of 24 consecutive months, a majority of the members of the Governing Body of the Issuer cease to be composed of individuals who are Continuing Directors; (iii) the acquisition by contract or otherwise by any Person or two or more Persons acting in concert, or the entering into of a contract or arrangement by any Person or two or more Persons acting in concert that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, beneficially or of record, a controlling influence over the management or policies of the Issuer, or control over 35% or more of the outstanding shares of the voting equity interests (with equivalent economic interests) of the Issuer, (iv) the Issuer shall cease to directly or indirectly own, free and clear of all Liens (except those created under the Collateral Documents, the First Lien Collateral Documents and non-consensual Liens that arise by operation of law), 100% of the outstanding Capital Stock of each of its Subsidiaries (whether acquired or formed before or after the Closing Date), and all voting rights and economic interests with respect thereto, other than pursuant to a transaction that is not prohibited hereunder, or (v) the occurrence of a "Change in Control" (or any comparable term) under, and as defined in, any document or agreement evidencing any Material Indebtedness.

"Change in Law" shall mean (i) the adoption of any applicable law, rule or regulation after the date of this Agreement, (ii) any change in any applicable law, rule or regulation, or any change in the interpretation, implementation or application thereof, by any Governmental Authority after the date of this Agreement, or (iii) compliance by any Purchaser (or its Applicable Funding Office) (or, for purposes of Section 2.15(b), by the Parent Company of such Purchaser, if applicable) 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; provided that for purposes of this Agreement, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Closing Date" shall mean the date on which the conditions precedent set forth in Section 3.1 have been satisfied or waived in accordance with Section 10.2 and the Notes are issued by the Issuer and purchased by the Purchasers.

"CMS" shall mean the Centers for Medicare and Medicaid Services, formerly known as the Health Care Financing Administration or HCFA, and any successor thereto.

"Code" shall mean the Internal Revenue Code of 1986, as amended and in effect from time to time, any successor statute, and the regulations promulgated and rulings issued thereunder.

"Collateral" shall mean all "Collateral" as defined in any Collateral Document and shall include the Mortgaged Properties, but shall exclude any Excluded Property.

"Collateral Access Agreement" shall mean each landlord waiver or bailee agreement granted to, and in form and substance reasonably acceptable to, the Collateral Agent and the Required Purchasers.

"Collateral Agent" shall have the meaning set forth in the introductory paragraph hereof.

"Collateral Documents" shall mean, collectively, the Guaranty and Security Agreement, any Real Estate Documents, the Account Control Agreements, the Government Receivables Account Agreements, the Information and Collateral Disclosure Certificate, all Copyright Security Agreements, all Patent Security Agreements, all Trademark Security Agreements, all Collateral Access Agreements, all assignments of key man life insurance policies and all other instruments and agreements now or hereafter securing or perfecting the Liens securing the whole or any part of the Obligations or any Guarantee thereof, all UCC financing statements, fixture filings and stock powers, and all other documents, instruments, agreements and certificates executed and delivered by any Note Party to the Collateral Agent and the Purchasers in connection with the foregoing.

"Commitment" shall mean, with respect to each Purchaser, the obligation of such Purchaser to purchase an Initial Note hereunder on the Closing Date, in an aggregate principal amount not exceeding the amount set forth with respect to such Purchaser on Schedule I. The aggregate principal amount of all Purchasers' Commitments as of the Closing Date is $100,000,000.

"Commitment Letter" shall mean that certain Commitment Letter, dated as of June 7, 2017, among Ares Management LLC (on behalf of one or more of its affiliated funds or accounts), each of the accounts listed on the signature pages thereto that is managed by Western Asset Management Company, J.P. Morgan Securities LLC and Goldman Sachs & Co. LLC and agreed and accepted by the Issuer.

"Commodity Exchange Act" shall mean the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Company Accreditation" shall have the meaning set forth in Section 4.20(c).

"Company Reimbursement Approval" shall have the meaning set forth in Section 4.22(a).

"Company Regulatory Filings" shall have the meaning set forth in Section 4.20(e).

"Competitor" shall mean each bona fide operating competitor directly engaged in the Issuer's line of business and set forth on Schedule II.

"Compliance Certificate" shall mean a certificate from a Responsible Officer of the Issuer in substantially the form of, and containing the certifications set forth in, the certificate attached hereto as Exhibit 5.1(c).

"Consolidated Covenant Testing Net Leverage Ratio" shall mean, as of any date, the ratio of (i) Consolidated Total Net Debt (other than any Consolidated Junior Indebtedness, any Subordinated Debt and any unsecured Indebtedness, in each case, not prohibited hereunder but, notwithstanding the foregoing, including all Permitted Seller Financing) as of such date to (ii) Consolidated EBITDA for the four consecutive Fiscal Quarters ending on (A) with respect to calculations of the Consolidated Covenant Testing Net Leverage Ratio required by Article VI, such date and (B) with respect to all other calculations of the Consolidated Covenant Testing Net Leverage Ratio, the last day of the most recent Fiscal Quarter prior to such date for which financial statements have been delivered (or were required to be delivered) pursuant to Section 5.1(a) or 5.1(b), as applicable. The Consolidated Covenant Testing Net Leverage Ratio shall be calculated on a Pro Forma Basis.

"Consolidated EBITDA" shall mean, for the Issuer and its Subsidiaries for any period, an amount equal to the sum of (i) Consolidated Net Income for such period plus (ii) to the extent deducted in determining Consolidated Net Income for such period, and in each case without duplication and as determined in accordance with GAAP, (a) Consolidated Interest Expense, (b) income tax expense (including any franchise taxes imposed in lieu of income taxes and taxes based on profit or capital) determined on a consolidated basis, (c) depreciation and amortization (including amortization of intangibles and goodwill) determined on a consolidated basis, (d) fees, out of pocket costs and expenses incurred in connection with dispositions, Investments, issuances of Indebtedness (including the First Lien Obligations) or Capital Stock and Capital Expenditures (whether or not successfully consummated) to the extent not prohibited hereunder, (e) extraordinary or non-recurring charges, (f) severance costs, retention bonuses and other similar compensation payments made to employees of any Note Party, (g) non-cash charges (including deferred compensation, stock option or employee benefits-based and other equity-based compensation expenses, in each case, made to employees, consultants and advisors of any Note Party), (h) transaction expenses incurred in connection with this Agreement and the transactions contemplated hereby, (i) restructuring charges, (j) integration and relocation expenses determined and calculated in each case on a basis not inconsistent with historical practice, (k) prepayment expense, including fees and premiums, incurred in connection with the retirement of existing indebtedness of the Issuer and its Subsidiaries, (l) fees and expenses paid to the Collateral Agent and the Purchasers hereunder and to the First Lien Collateral Agent and the First Lien Purchasers under the First Lien Note Purchase Agreement (in each case, to the extent not otherwise included in the calculation of Consolidated Interest Expense), (m) transaction expenses and integration expenses incurred in connection with the Acquisition of Home Infusion Solutions, LLC, (n) losses and expenses from discontinued operations, divested joint ventures and other divested Investments or incurred in connection with the disposal of discontinued operations or the divestiture of joint ventures and other Investments, (o) expenses incurred in connection with the settlement of any litigation or claim involving any Note Party (so long as, with respect to each such litigation or claim, such expenses exceed $100,000); provided, however, any such amount added back pursuant to this clause (o) shall not exceed $6,300,000 in the aggregate (including related legal fees not to exceed $500,000) over the term of this Agreement and (p) the cumulative effect of a change in accounting principles; provided that the aggregate amount that may be added to Consolidated Net Income pursuant to clauses (d), (e), (f), (h), (i), (j), (k), (l), (m), (n) and (o) above in any period of four consecutive Fiscal Quarters shall not exceed $30,000,000; provided, further, that, commencing with the fifth full Fiscal Quarter following the Closing Date, (I) the aggregate amount that may be added to Consolidated Net Income pursuant to clauses (e), (f), (i), (j) and (m) above in any period of four consecutive Fiscal Quarters shall not exceed $20,000,000 and (II) the aggregate amount that may be added to Consolidated Net Income pursuant to clauses (d), (h), (k), (l), (n) and (o) above in any period of four consecutive Fiscal Quarters shall not exceed $10,000,000.

"Consolidated Interest Expense" shall mean, for the Issuer and its Subsidiaries for any period, determined on a consolidated basis in accordance with GAAP, the sum of (i) total interest expense, (including, without limitation and without duplication, (a) the interest component of any payments in respect of Capital Lease Obligations, capitalized or expensed during such period (whether or not actually paid during such period), (b) any premium or penalty payable in connection with the payment of make-whole amounts or other prepayment premiums payable in connection with any Indebtedness of the Issuer or any of its Subsidiaries, (c) all commissions, discounts and other fees and charges owed in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP, (d) any interest accrued during such period in respect of Indebtedness of the Issuer or any Subsidiary that is required to be capitalized rather than paid in cash, (e) interest paid or payable with respect to discontinued operations and (f) the interest portion of any deferred payment obligations) plus (ii) the net amount payable (or minus the net amount receivable) with respect to Hedging Transactions during such period (whether or not actually paid or received during such period).

"Consolidated Junior Indebtedness" shall mean, as of any date, the aggregate stated principal amount of all Indebtedness of the Issuer and its Subsidiaries, measured on a consolidated basis as of such date, secured by Liens that are junior in priority to the Liens securing the Obligations.

"Consolidated Net Income" shall mean, for the Issuer and its Subsidiaries for any period, the net income (or loss) of the Issuer and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, but excluding therefrom (to the extent otherwise included therein) (i) any extraordinary gains or losses, (ii) any gains or losses attributable to write-ups or write-downs of assets (including any reappraisal or revaluation of assets (including intangibles, goodwill and deferring financing costs)), or the sale of assets (other than the sale of assets in the ordinary course of business), (iii) any interest of the Issuer or any Subsidiary of the Issuer in the unremitted or undistributed earnings of any Person in which the Issuer or any Subsidiary of the Issuer has an equity interest but that is not a Subsidiary, (iv) any income (or loss) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Issuer or any Subsidiary or the date that such Person's assets are acquired by the Issuer or any Subsidiary, (v) any income (or loss) for such period attributable to the early extinguishment of Indebtedness, (vi) any interest of the Issuer or any Subsidiary of the Issuer in the unremitted or undistributed earnings of any Subsidiary of the Issuer or another Subsidiary of the Issuer to the extent that such remittance or distribution of earnings is prohibited by the organizational documents of such Subsidiary, contractual restrictions applicable to such Subsidiary, or by applicable Requirements of Law, and (vii) any unrealized income (or loss) in respect of Hedging Obligations.

"Consolidated Total Assets" shall mean, as of any date, the total assets of the Issuer and its Subsidiaries set forth on the consolidated balance sheet of the Issuer and its Subsidiaries as of the end of the most recently ended Fiscal Quarter for which financial statements have been delivered (or were required to be delivered) pursuant to Section 5.1(a) or 5.1(b), as applicable, determined on a consolidated basis in conformity with GAAP.

"Consolidated Total Debt" shall mean, as of any date, the aggregate stated principal amount of all Indebtedness of the Issuer and its Subsidiaries measured on a consolidated basis as of such date, but excluding (i) Indebtedness of the type described in clause (xi) of the definition thereof, (ii) Indebtedness of the type described in Section 7.1(a)(xii), (iii) the portion of any earn-out or other deferred or contingent purchase consideration that is based upon the achievement of future financial or operational criteria and that has not yet been earned in accordance with the terms of the applicable agreements, and (iv) Indebtedness of the type described in clause (vi) of the definition thereof (except to the extent of any unreimbursed drawings thereunder).

"Consolidated Total Net Debt" shall mean, as of any date, the sum of (i) Consolidated Total Debt minus (ii) the aggregate amount of cash and Cash Equivalents held by the Note Parties with respect to which the Collateral Agent has a first-priority perfected lien securing the Obligations (subject only to the lien of the First Lien Collateral Agent securing the First Lien Obligations) included in the consolidated balance sheet of the Note Parties as of such date (other than (a) Restricted Cash and (b) for purposes of calculating the Consolidated Total Net Leverage Ratio or the Consolidated Covenant Testing Net Leverage Ratio, as applicable, the aggregate principal amount of any Indebtedness incurred on the date on which such ratio is calculated).

"Consolidated Total Net Leverage Ratio" shall mean, as of any date, the ratio of (i) Consolidated Total Net Debt as of such date to (ii) Consolidated EBITDA for the four consecutive Fiscal Quarters ending on the last day of the most recent Fiscal Quarter prior to such date for which financial statements have been delivered (or were required to be delivered) pursuant to Section 5.1(a) or 5.1(b), as applicable. The Consolidated Total Net Leverage Ratio shall be calculated on a Pro Forma Basis.

"Continuing Director" shall mean, with respect to any period, any individuals (A) who were members of the Governing Body of the Issuer on the first day of such period, (B) whose election or nomination to that Governing Body was approved by individuals referred to in clause (A) above constituting at the time of such election or nomination at least a majority of that Governing Body, or (C) whose election or nomination to that Governing Body was approved by individuals referred to in clauses (A) and (B) above constituting at the time of such election or nomination at least a majority of that Governing Body.

"Contractual Obligation" of any Person shall mean any provision of any security issued by such Person or of any agreement, instrument or undertaking under which such Person is obligated or by which it or any of the property in which it has an interest is bound.

"Controlled Account" shall have the meaning set forth in Section 5.11.

"Copyright" shall have the meaning assigned to such term in the Guaranty and Security Agreement.

"Copyright Security Agreement" shall mean any Copyright Security Agreement executed by a Note Party owning registered Copyrights or applications for Copyrights in favor of the Collateral Agent for the benefit of the Secured Parties, both on the Closing Date and thereafter.

"Delayed Draw Advance" shall mean an advance to the Issuer by a Purchaser with a Delayed Draw Commitment on the Delayed Draw Date pursuant to Section 2.2(b).

"Delayed Draw Advance Request" shall mean a Delayed Draw Advance Request substantially in the form of Exhibit D.

"Delayed Draw Commitment" shall mean, with respect to each Purchaser, the obligation of such Purchaser to make a Delayed Draw Advance hereunder, in a principal amount not exceeding the amount set forth with respect to such Purchaser on Schedule I. The aggregate principal amount of all Purchasers' Delayed Draw Commitments is $10,000,000 as of the Closing Date.

"Delayed Draw Date" shall mean the date on which the Delayed Draw Advances are made.

"Delayed Draw Note" and "Delayed Draw Notes" shall have the meaning set forth in Section 2.2(b).

"Debtor Relief Laws" means the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

"Default" shall mean any condition or event that, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Default Interest" shall have the meaning set forth in Section 2.10(c).

"Defaulting Purchaser" shall mean, subject to Section 2.21, any Purchaser that (a) has failed to (i) purchase its Notes or make any Delayed Draw Advance under its Delayed Draw Notes within two (2) Business Days of the date such Notes were required to be purchased or such Delayed Draw Advance was required to be made hereunder unless such Purchaser notifies the Issuer and each other Purchaser in writing that such failure is the result of such Purchaser's good faith determination that one or more conditions precedent to purchase or making of a Delayed Draw Advance (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Collateral Agent or any other Purchaser any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Issuer in writing that it does not intend to comply with its purchase or advance obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Purchaser's obligation to purchase a Note or make a Delayed Draw Advance hereunder and states that such position is based on such Purchaser's good faith determination that a condition precedent to purchase or making of a Delayed Draw Advance (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Issuer, to confirm in writing to the Issuer that it will comply with its prospective purchase or advance obligations hereunder (provided that such Purchaser shall cease to be a Defaulting Purchaser pursuant to this clause (c) upon receipt of such written confirmation by the Issuer), or (d) has, or has a direct or indirect Parent Company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-in Action; provided that a Purchaser shall not be a Defaulting Purchaser solely by virtue of the ownership or acquisition of any equity interest in that Purchaser or any direct or indirect Parent Company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Purchaser with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Purchaser (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Purchaser.

"Disqualified Capital Stock" shall mean, with respect to any Person, any Capital Stock that by its terms (or by the terms of any other Capital Stock into which it is convertible or exchangeable) or otherwise (i) matures (other than as a result of a voluntary redemption or repurchase by the issuer of such Capital Stock) or is subject to mandatory redemption or repurchase (other than solely for Capital Stock that is not Disqualified Capital Stock) pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holder thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior payment in full in cash of the Obligations (other than any Obligations which expressly survive termination and indemnities and other contingent obligations not then due and payable and as to which no claim has been made) and termination of the Commitments and the Delayed Draw Commitments); or (ii) is convertible into or exchangeable or exercisable for Indebtedness or any Disqualified Capital Stock at the option of the holder thereof; or (iii) may be required to be redeemed or repurchased at the option of the holder thereof (other than solely for Capital Stock that is not Disqualified Capital Stock), in whole or in part, in each case specified in (i), (ii) or (iii) above on or prior to the date that is ninety one days after the Maturity Date; or (d) provides for scheduled payments of dividends to be made in cash.

"Disqualified Institution" shall mean (a) any Disqualified Purchaser and (b) any Competitor.

"Disqualified Purchaser" shall mean each institutional investor, bank or other financial institution previously identified in writing to the Purchasers and the Collateral Agent and set forth in that certain letter agreement dated as of the date hereof delivered by the Issuer to the Purchasers and the Collateral Agent (the "Disqualified Purchaser Letter"), and each Person known to the applicable Purchaser seeking to sell all or a portion of the Note(s) held by it to be an Affiliate thereof and any Person that is readily identifiable as an affiliate thereof on the basis of its name; provided that in no event shall any bona fide (A) debt fund, (B) investment vehicle, (C) regulated bank entity or (D) non-regulated lending entity, in each case, that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business (each, a "Bona Fide Lending Affiliate") be a Disqualified Purchaser, unless such Bona Fide Lending Affiliate is identified in the Disqualified Purchaser Letter.

"Dollar(s)" and the sign "$" shall mean lawful money of the United States.

"Domestic Subsidiary" shall mean each Subsidiary of the Issuer that is organized under the laws of the United States or any state or district thereof and which is not a CFC Subsidiary.

"EEA Financial Institution" shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Effective Yield" means, as to any Indebtedness, the effective yield on such Indebtedness in the reasonable determination of the Required Purchasers in consultation with the Issuer and consistent with generally accepted financial practices, taking into account the applicable interest rate margins, any interest rate floors or similar devices and all fees, including upfront or similar fees or original issue discount (converted to yield assuming a four-year average life to maturity and without any present value discount) payable generally to lenders or other institutions providing such Indebtedness, but excluding any arrangement, structuring, ticking or other similar fees payable in connection therewith that are not generally shared with the relevant lenders or other institutions providing such Indebtedness and, if applicable, consent fees for an amendment paid generally to consenting lenders or other institutions providing such Indebtedness.

"Environmental Indemnity" shall mean each environmental indemnity made by each Note Party with respect to Real Estate required to be pledged as Collateral in favor of the Collateral Agent for the benefit of the Secured Parties, in each case in form and substance reasonably satisfactory to the Collateral Agent and the Required Purchasers.

"Environmental Laws" shall mean all applicable laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, binding notices or binding agreements issued, promulgated or entered into by or with any Governmental Authority relating in any way to the environment, preservation or reclamation of natural resources, the management, Release or threatened Release of any Hazardous Material or to health and safety matters.

"Environmental Liability" shall mean any liability, contingent or otherwise (including any liability for damages, costs of environmental investigation and remediation, costs of administrative oversight, fines, natural resource damages, penalties or indemnities), of the Issuer or any of its Subsidiaries directly or indirectly resulting from or based upon (i) any actual or alleged violation of any Environmental Law, (ii) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (iii) any actual or alleged exposure to any Hazardous Materials, (iv) the Release or threatened Release of any Hazardous Materials or (v) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended and in effect from time to time, and any successor statute and the regulations promulgated and rulings issued thereunder.

"ERISA Affiliate" shall mean any person that for purposes of Title IV of ERISA or Section 412 of the Code would be deemed at any relevant time to be a "single employer" or otherwise aggregated with the Issuer or any of its Subsidiaries under Section 414(b) or (c) (or, as relevant, Section 414(m) or (o)) of the Code or Section 4001 of ERISA.

"ERISA Event" shall mean (i) the occurrence of any "reportable event" as defined in Section 4043 of ERISA with respect to a Plan (other than an event as to which the PBGC has waived the requirement of Section 4043(a) of ERISA that it be notified of such event); (ii) any failure to make a required contribution to any Plan that would result in the imposition of a lien or other encumbrance or the provision of security under Section 430 of the Code or Section 303(k) or 4068 of ERISA, or the arising of such a lien or encumbrance; (iii) there being or arising any "unpaid minimum required contribution" or "accumulated funding deficiency" (as defined or otherwise set forth in Section 4971 of the Code or Part 3 of Subtitle B of Title 1 of ERISA), whether or not waived; (iv) any filing of any request for or receipt of a minimum funding waiver under Section 412 of the Code or Section 302 of ERISA with respect to any Plan or Multiemployer Plan; (v) any incurrence by the Issuer, any of its Subsidiaries or any of their respective ERISA Affiliates of any liability under Title IV of ERISA with respect to any Plan or Multiemployer Plan (other than for premiums due and not delinquent under Section 4007 of ERISA); (vi) any institution of proceedings, or the occurrence of an event or condition which would reasonably be expected to constitute grounds for the institution of proceedings, by the PBGC, under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (vii) any incurrence by the Issuer, any of its Subsidiaries or any of their respective ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Multiemployer Plan, or the receipt by the Issuer, any of its Subsidiaries or any of their respective ERISA Affiliates of any notice that a Multiemployer Plan is in endangered or critical status under Section 305 of ERISA; (viii) any receipt by the Issuer, any of its Subsidiaries or any of their respective ERISA Affiliates of any notice, or any receipt by any Multiemployer Plan from the Issuer, any of its Subsidiaries or any of their respective ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; (ix) the occurrence of a non-exempt prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code with respect to any Plan such that material liability would be incurred by the Issuer or any of its Subsidiaries; (x) any filing of a notice of intent to terminate any Plan if such termination would require material additional contributions in order to be considered a standard termination within the meaning of Section 4041(b) of ERISA; (xi) any filing under Section 4041(c) of ERISA of a notice of intent to terminate any Plan; or (xii) the termination of any Plan under Section 4041(c) of ERISA.

"EU Bail-In Legislation Schedule" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Eurodollar", when used in reference to any Note or Issuance, refers to whether such Note, or the Notes issued pursuant to such Issuance, bears interest at a rate determined by reference to the LIBOR Rate.

"Event of Default" shall have the meaning set forth in Section 8.1.

"Excess Cash Flow" shall mean, for the Issuer and its consolidated Subsidiaries for any Fiscal Year:

(a) Consolidated EBITDA for such Fiscal Year,

minus

(b) the sum of the following, without duplication:

(i) the aggregate amount of all regularly scheduled principal payments of Indebtedness (including the Notes and the principal component of any Capital Lease Obligations) made during such Fiscal Year (excluding payments in respect of any revolving credit facility unless there is an equivalent permanent reduction in commitments thereunder);

(ii) the aggregate amount of all mandatory prepayments or repurchases of Indebtedness for borrowed money (including the Notes and the First Lien Notes) (other than in connection with any permitted refinancing) made during such Fiscal Year (excluding payments in respect of any revolving credit facility unless there is an equivalent permanent reduction in commitments thereunder) other than any mandatory prepayment required pursuant to Section 2.9(c) and Section 2.9(c) of the First Lien Note Purchase Agreement;

(iii) the aggregate amount of all voluntary prepayments of Indebtedness for borrowed money (other than the Obligations and the First Lien Obligations) made during such Fiscal Year (excluding payments in respect of any revolving credit facility unless there is an equivalent permanent reduction in commitments thereunder);

(iv) Consolidated Interest Expense paid in cash for such Fiscal Year;

(v) income taxes (including franchise taxes imposed in lieu of income taxes) paid in cash with respect to such Fiscal Year;

(vi) the aggregate amount paid in cash during such Fiscal Year on account of Capital Expenditures, Investments, and Restricted Payments, in each case, to the extent not prohibited hereunder (including the amount of all related fees, costs and expenses incurred in connection therewith) and excluding the portion of any such Capital Expenditure, Investments, or Restricted Payments that is financed with funds that do not constitute Internally Generated Cash; provided that, with respect to any Capital Expenditures and other Investments described in this clause (vi), the Issuer may include in the calculation of Excess Cash Flow for any Fiscal Year the aggregate amount of expenditures that the Issuer or any of its Subsidiaries becomes legally obligated to make during such Fiscal Year pursuant to a binding contract, committed purchase order or other binding agreement but that are not actually made in cash during such Fiscal Year so long as (x) such expenditures are actually made in cash during the following Fiscal Year, (y) the Issuer includes in the certificate required to be delivered pursuant to Section 2.9(c) a description of such expenditures and a certification that such expenditures will be made during the following Fiscal Year, and (z) if such expenditures are included in the calculation of Excess Cash Flow for any Fiscal Year, they may not be included in the calculation of Excess Cash Flow for the following Fiscal Year;

(vii) any increase in the Working Capital during such period (measured as the excess of such Working Capital at the end of such period over such Working Capital at the beginning of such period);

(viii) all other items added back to Consolidated EBITDA pursuant to (and subject to the limitations in) the definition of Consolidated EBITDA to the extent paid in cash during such Fiscal Year;

plus

(c) without duplication, any decrease in the Working Capital during such period (measured as the excess of such Working Capital at the beginning of such period over such Working Capital at the end thereof).

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended and in effect from time to time.

"Excluded Account" shall mean (a) deposit accounts specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of any Note Party's employees, (b) any other zero balance account or disbursement only account, (c) deposit accounts specifically and exclusively used for escrowing funds and holding funds in trust, (d) Government Receivables Accounts, (e) any deposit account specifically and exclusively used to hold cash collateral for letters of credit permitted pursuant to Section 7.1(a)(xix), and (f) any other deposit account, securities account or commodities account, including local or petty cash accounts, which (i) individually does not have an average daily balance for a period in excess of three (3) Business Days of more than $1,000,000 in cash or investment property on deposit therein or (ii) collectively with all such other accounts described in this clause (f), does not have an aggregate balance at any time of more than $3,000,000 in cash or investment property on deposit therein.

"Excluded Property" shall have has the meaning specified in the Guaranty and Security Agreement.

"Excluded Taxes" shall mean, with respect to any payment to be made by or on account of any obligation of the Issuer hereunder, (a) income or franchise Taxes that are (i) imposed on (or measured by) the Recipient's (or Beneficial Owner's) net income by the United States, or by the jurisdiction under the laws of which such Recipient (or Beneficial Owner) is organized or in which its principal office is located or, in the case of any Purchaser, in which its Applicable Funding Office is located or (ii) Other Connection Taxes, (b) any branch profits Taxes imposed by the United States or any similar Taxes that are imposed by any other jurisdiction in which such Recipient (or Beneficial Owner) is located, (c) in the case of a Purchaser, any U.S. federal withholding Taxes that are imposed on amounts payable to any Recipient (or Beneficial Owner) at the time such Recipient (or Beneficial Owner) becomes a Recipient (or Beneficial Owner) under this Agreement or designates a new funding office, except in each case to the extent that amounts with respect to such Taxes were payable either (i) to such Recipient's (or Beneficial Owner's) assignor immediately before such Recipient (or Beneficial Owner) became a Recipient (or Beneficial Owner) under this Agreement, or (ii) to such Recipient (or Beneficial Owner) immediately before it designated a new funding office, (d) any Taxes that are attributable to a Recipient's (or Beneficial Owner's) failure to comply with Section 2.17(f), or (e) any Taxes imposed under FATCA.

"Existing Credit Agreement" shall mean that certain Credit Agreement dated as of July 31, 2013, by and among the Issuer, the lenders from time to time party thereto and SunTrust Bank, as administrative agent, issuing bank and swingline lender, as amended, restated, supplemented, or otherwise modified from time to time prior to the Closing Date.

"Existing Priming Credit Agreement" shall mean that certain Priming Credit Agreement dated as of January 6, 2017, by and among the Issuer, the lenders from time to time party thereto and SunTrust Bank, as administrative agent, as amended, restated, supplemented, or otherwise modified from time to time prior to the Closing Date.

"Exjade Settlement" shall mean the Issuer's payment of an amount equal to $15,000,000, together with applicable interest thereon (plus any amounts arising out of the Issuer's obligation to reimburse certain parties for their out of pocket expenses) to settle certain allegations relating to the prescription drug known as Exjade as described in the Issuer's Form 8-K filed with the SEC on or about December 16, 2013.

"FATCA" shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations with respect thereto or official administrative interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any intergovernmental agreements (or related legislation or official administrative rules or practices) implementing the foregoing.

"FDA" shall mean the United Stated Food & Drug Administration.

"Federal Funds Rate" shall mean, for any day, the rate *per annum* (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with member banks of the Federal Reserve System arranged by Federal funds brokers, as published by the Federal Reserve Bank of New York on the next succeeding Business Day or, if such rate is not so published for any Business Day, the Federal Funds Rate for such day shall be the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day on such transactions received by the Required Purchasers from three Federal funds brokers of recognized standing selected by the Required Purchasers.

"Federal/State Healthcare Program Account Debtor" shall mean any account debtor which is (a) the United States of America acting under the Medicaid or Medicare program established pursuant to the Social Security Act, the Tricare/CHAMPUS Program or any other Federally sponsored health care program other than the health care programs for which Federal government employees are beneficiaries, (b) any state or the District of Columbia acting pursuant to a health plan adopted pursuant to a State Medicaid program or (c) any agent, carrier, administrator or intermediary for any of the foregoing.

"Fee Letters" shall mean, collectively, (a) that certain closing payment letter dated as of June 7, 2017 (the "Ares Closing Payment Letter"), executed by Ares Management LLC, on behalf of one or more of its affiliated funds or accounts, and accepted by the Issuer and (b) that certain fee letter dated June 19, 2017 between the Collateral Agent and the Issuer.

"First Lien/Second Lien Intercreditor Agreement" shall mean that certain Intercreditor Agreement, dated as of the Closing Date, between the First Lien Collateral Agent and the Collateral Agent, and acknowledged by the Note Parties, as the same may be amended, supplemented, waived or otherwise modified from time to time in accordance with the terms hereof and thereof.

"First Lien Collateral Agent" shall have the meaning assigned to the term "Collateral Agent" in the First Lien Note Purchase Agreement.

"First Lien Collateral Documents" shall mean the "Collateral Documents" under and as defined in the First Lien Note Purchase Agreement.

"First Lien Note Documents" shall mean the First Lien Note Purchase Agreement and the other "Note Documents" as defined in the First Lien Note Purchase Agreement, in each case, as amended, restated and/or modified from time to time in accordance with the terms thereof and of the First Lien/Second Lien Intercreditor Agreement.

"First Lien Note Purchase Agreement" shall mean that certain First Lien Note Purchase Agreement dated as of the Closing Date, by and among the Issuer, the financial institutions party thereto from time to time and Wells Fargo Bank, National Association, in its capacity as collateral agent thereunder, as the same may be amended, restated, supplemented, waived, extended or otherwise modified from time to time in accordance with the First Lien/Second Lien Intercreditor Agreement.

"First Lien Notes" shall have the meaning assigned to the term "Notes" in the First Lien Note Purchase Agreement.

"First Lien Obligations" shall mean the "Obligations" under and as defined in the First Lien Note Purchase Agreement.

"First Lien Purchasers" shall mean the "Purchasers" under and as defined in the First Lien Note Purchase Agreement.

"Fiscal Quarter" shall mean any fiscal quarter of the Issuer.

"Fiscal Year" shall mean any fiscal year of the Issuer.

"Flood Insurance Laws" shall mean, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect of any successor statute thereto, in each case, together with all statutory and regulatory provisions consolidating, amending, replacing, supplementing, implementing or interpreting any of the foregoing, as amended or modified from time to time.

"Food and Drug Laws" shall mean any applicable laws, rules, regulations, ordinances and administrative manuals, orders, guidelines, guidances and requirements issued by any Governmental Authority relating to the compounding, development, design, premarket clearance, approval, collection, manufacture, processing, holding, storing, testing, labeling, packaging, repackaging, packing, transporting, shipping, importing, exporting, marketing, advertising, promotion, sale, installation, servicing, and distribution of food, drugs, biological products, cosmetics and/or medical devices including components and accessories including, without limitation, the Federal Food Drug, and Cosmetic Act, 21 U.S.C. § 321 et seq., and all analogous federal, state, local, municipal, foreign, multinational, foreign regional, and foreign national laws, rules, orders, binding agreements, regulations, statutes, directives, standards, ordinances, codes or requirements of any Governmental Authority.

"Foreign Person" shall mean any Person that is not a U.S. Person.

"Foreign Subsidiary" shall mean each Subsidiary of the Issuer other than a Domestic Subsidiary.

"GAAP" shall mean generally accepted accounting principles in the United States applied on a consistent basis and subject to the terms of Section 1.3.

"Governing Body" shall mean the board of directors, board of managers, board of representatives, board of advisors or similar governing or advisory body of any Person.

"Governmental Authority" shall mean the government of the United States, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including, without limitation, CMS and FDA.

"Governmental Payors" shall mean Medicare, Medicaid, CHAMPUS, CHAMPVA, TRICARE, Veteran's Administration or any other Governmental Authority or quasi-public agency providing funding for healthcare services.

"Governmental Payor Arrangements" shall mean arrangements, plans or programs with Governmental Payors for payment or reimbursement in connection with health care services, products or supplies.

"Government Receivables Account" shall have the meaning set forth in Section 5.11(e).

"Government Receivables Account Agreement" shall have the meaning set forth in Section 5.11(e).

"Guarantee" of or by any Person (the "guarantor") shall mean any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly and including any obligation, direct or indirect, of the guarantor (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (iv) as an account party in respect of any letter of credit or letter of guaranty issued in support of such Indebtedness or obligation; provided that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable principal amount of the primary obligation in respect of which such Guarantee is made or, if not so 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. The term "Guarantee" used as a verb has a corresponding meaning.

"Guarantor" shall mean each of the Subsidiary Note Parties.

"Guaranty and Security Agreement" shall mean the Second Lien Guaranty and Security Agreement, dated as of the date hereof, made by the Note Parties in favor of the Collateral Agent for the benefit of the Secured Parties.

"Hazardous Materials" shall mean all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Health Care Audits" shall have the meaning set forth in Section 4.20(g).

"Healthcare Laws" shall mean, collectively, any and all federal state or local laws, rules, regulations, ordinances and administrative manuals, orders, guidelines, guidances and requirements issued by any Governmental Authority under or in connection with Medicare, Medicaid or any Government Payor program or any law governing the licensure of or regulating healthcare providers, professionals, facilities or payors or otherwise governing or regulating the provision of, or payment for, medical services, including without limitation, (i) all federal and state fraud and abuse laws, including but not limited to the federal Anti-Kickback Statute (42 U.S.C. (§1320a-7b(b)), the Stark Law, the civil False Claims Act (31 U.S.C. §3729 et seq.), Section 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations promulgated pursuant to such statues; (ii) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and the regulations promulgated thereunder, (iii) HIPAA and the HITECH Act, (iv) Medicare; (v) Medicaid; (vi) the Controlled Substances Act (21 U.S.C. § 801, et seq.) and all applicable requirements, regulations and guidances issued thereunder by the Drug Enforcement Administration ("DEA"); (vii) Food and Drug Laws, (viii) state pharmacy laws; (ix) the Clinical Laboratory Improvement Act (42 U.S.C. § 263a, et seq.), (x) the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (P.L. 108-173, 117 Stat. 2066), (xi) all applicable professional standards regulating healthcare providers, healthcare professionals, healthcare facilities or healthcare payors, each of (i) through (x) as may be amended from time to time.

"Healthcare Material Adverse Effect" shall mean (a) any Material Adverse Effect or (b) any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singularly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences whether or not related, that (i) has resulted, or is reasonably likely to result, in the suspension or termination of the ability to operate of one or more BioScrip Facilities, unless (x) the patients serviced by all such BioScrip Facilities that are subject to such suspension or termination can be moved to, or serviced by, other BioScrip Facilities that are not subject to suspension or termination at a cost to the Issuer and its Subsidiaries of not more than $2,500,000 in the aggregate and (y) there is no reasonably anticipated payor contract disruption that is reasonably likely to result in the loss of more than $2,500,000 in gross revenues as a result of such movement of patients to, or such servicing of patients by, other BioScrip Facilities, (ii) has resulted, or is reasonably likely to result, in the inability of the Issuer and its Subsidiaries to deliver services to more than 5.0% of the patients of the Issuer and its Subsidiaries, (iii) has resulted, or is reasonably likely to result, in remediation costs to the Issuer and its Subsidiaries in excess of $2,500,000 or (iv) results in or is reasonably likely to result in the loss of more than $2,500,000 in gross revenues by the Issuer and its Subsidiaries.

"Hedging Obligations" of any Person shall mean any and all monetary obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired under (i) any and all Hedging Transactions, (ii) any and all cancellations, buy backs, reversals, terminations or assignments of any Hedging Transactions and (iii) any and all renewals, extensions and modifications of any Hedging Transactions and any and all substitutions for any Hedging Transactions.

"Hedge Termination Value" shall mean, in respect of any one or more Hedging Transactions, after taking into account the effect of any netting agreement relating to such Hedging Transactions, (a) for any date on or after the date such Hedging Transactions have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedging Transactions, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedging Transactions (which may include a Purchaser or any Affiliate of a Purchaser).

"Hedging Transaction" of any Person shall mean (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into by such Person that is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, spot transaction, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104 191, Aug. 21, 1996, 110 Stat. 1936, and regulations promulgated pursuant thereto regarding privacy, security and transmission of health information (including the Standards for Privacy of Individually Identifiable Health Information, the Security Standards for the Protection of Electronic Protected Health Information and the Standards for Electronic Transactions and Code Sets promulgated thereunder), all as amended from time to time, and any successor statute and regulations.

"HIPAA/HITECH Compliance Plan" shall have the meaning set forth in Section 4.21.

"HIPAA/HITECH Compliant" shall have the meaning set forth in Section 4.21.

"HITECH Act" shall mean the Health Information Technology for Economic and Clinical Health Act provisions of the American Reinvestment and Recovery Act of 2009, and regulations promulgated pursuant thereto, all as amended from time to time, and any successor statute and regulations.

"Increased Yield Amount" shall have the meaning set forth in the definition of Repricing Transaction.

"Indebtedness" of any Person shall mean, without duplication, (i) all obligations of such Person for borrowed money (including, without limitation, the First Lien Obligations), (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person in respect of the deferred purchase price of property or services (other than current liabilities, accrued expense obligations and trade payables incurred in the ordinary course of business; provided that any such obligation that is secured by a Lien (including the ABDC Obligations) shall constitute Indebtedness), (iv) all obligations of such Person under any conditional sale or other title retention agreement(s) relating to property acquired by such Person, (v) all Capital Lease Obligations of such Person, (vi) all obligations, contingent or otherwise, of such Person in respect of letters of credit, acceptances or similar extensions of credit, (vii) all Guarantees of such Person of the type of Indebtedness described in clauses (i) through (vi) above, (viii) all Indebtedness of a third party secured by any Lien on property owned by such Person, whether or not such Indebtedness has been assumed by such Person (but limited to the lesser of the fair market value of such property and the outstanding principal amount of such Indebtedness), (ix) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any Disqualified Capital Stock of such Person, (x) all Off-Balance Sheet Liabilities and (xi) obligations of such Person under any Hedging Obligations (valued at the lesser of the Hedging Termination Value and the Net Mark-to-Market Exposure thereof). The Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer, except to the extent that the terms of such Indebtedness provide that such Person is not liable therefor. The Indebtedness of any Person shall exclude purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller.

"Indemnified Taxes" shall mean (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Note Party under any Note Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

"Information and Collateral Disclosure Certificate" shall have the meaning assigned to such term in the Guaranty and Security Agreement.

"Initial Note" and "Initial Notes" shall have the meaning set forth in Section 2.2(a).

"Intellectual Property Rights" shall have the meaning assigned to such term in the Guaranty and Security Agreement.

"Interest Period" shall mean with respect to any Eurodollar Note, a period of one month; provided that:

(i) the initial Interest Period for such Note shall commence on the date of Issuance of such Note or, in the case of the Delayed Draw Notes, the Delayed Draw Date (including the date of any conversion from a Note of another Type), and each Interest Period occurring thereafter in respect of such Note shall commence on the day on which the next preceding Interest Period expires;

(ii) if any Interest Period would otherwise end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day, unless such Business Day falls in another calendar month, in which case such Interest Period would end on the next preceding Business Day;

(iii) any Interest Period which begins on the last Business Day of a calendar month or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period shall end on the last Business Day of such calendar month; and

(iv) no Interest Period may extend beyond the Maturity Date.

"Internally Generated Cash" shall mean internally generated cash of the Issuer and its Subsidiaries (and shall exclude, for the avoidance of doubt, the proceeds of any disposition of assets, sale of equity, capital contribution or incurrence of Indebtedness).

"Investments" shall have the meaning set forth in Section 7.4.

"IRS" shall mean the Internal Revenue Service of the United States.

"Issuance" shall mean an issuance hereunder consisting of Notes to be issued by or for the benefit of the Issuer to any Purchasers pursuant to Article II.

"Issuer" shall have the meaning set forth in the introductory paragraph hereof.

"LIBOR Rate" shall mean for each Interest Period, a rate of interest determined by the Required Purchasers (which determination shall be conclusive in the absence of manifest error) equal to the greater of:

(i) one and twenty-five hundredths of one percent (1.25%) per annum, and

(ii) (a) the rate per annum appearing on Bloomberg L.P.'s service (the "Service") (or on any successor to or substitute for the Service) for ICE LIBOR USD interest rates as of 11:00 a.m. (London, England time) two Business Days prior to the commencement of the requested Interest Period, for a term and in an amount comparable to the Interest Period and the amount of the Eurodollar Note requested (whether as an initial Eurodollar Note or as a continuation of a Eurodollar Note or as a conversion of a Base Rate Note to a Eurodollar Note) by the Issuer in accordance with this Agreement. If the Service shall no longer report ICE LIBOR USD interest rates, or such interest rates cease to exist, the Required Purchasers shall be permitted to select an alternate service that quotes, or alternate interest rates that reasonably approximate, the rates of interest per annum at which deposits of Dollars in immediately available funds are offered by major financial institutions reasonably satisfactory to the Required Purchasers in the London interbank market as of 11:00 a.m. (London, England time) two (2) Business Days prior to the commencement of the requested Interest Period; divided by

(b) a number equal to 1.0 minus the aggregate (but without duplication) of the rates (expressed as a decimal fraction) of reserve requirements in effect on the day which is two (2) Business Days prior to the beginning of such Interest Period (including basic, supplemental, marginal and emergency reserves under any regulations of the Board of Governors of the Federal Reserve system or other governmental authority having jurisdiction with respect thereto, as now and from time to time in effect) for Eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D of such Board) which are required to be maintained by a member bank of the Federal Reserve System;

such rate to be adjusted to the nearest one sixteenth of one percent (1/16th of 1%) or, if there is not a nearest one sixteenth of one percent (1/16th of 1%), to the next highest one sixteenth of one percent (1/16th of 1%).

"Licenses" shall mean any and all licenses (including professional licenses), approvals, certificates of need, accreditations, certifications, permits, franchises, rights to conduct business (by a Governmental Authority or otherwise), Orders and any other governmental authorizations.

"Lien" shall mean any mortgage, pledge, security interest, lien (statutory or otherwise), charge, encumbrance, hypothecation, assignment, deposit arrangement, or other arrangement having the practical effect of any of the foregoing (including any conditional sale or other title retention agreement and any capital lease having the same economic effect as any of the foregoing).

"Limitation" shall mean a revocation, suspension, termination, impairment, probation, limitation, non-renewal, forfeiture, restriction, declaration of ineligibility, loss of status as a participating provider, or the loss of any other rights under any Governmental Payor Arrangement, Third Party Payor Arrangement, Company Accreditation or License.

"Material Adverse Effect" shall mean any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singularly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences whether or not related, that results in a material adverse change in, or a material adverse effect on, (i) the business, condition (financial or otherwise), operations, liabilities (contingent or otherwise), or properties of the Issuer and its Subsidiaries on a consolidated basis and taken as a whole, (ii) the ability of the Note Parties to perform any of their respective obligations under the Note Documents, or (iii) the rights and remedies of the Collateral Agent or the Purchasers under any of the Note Documents (other than solely as a result of any action or inaction on the part of the Collateral Agent or any Purchaser).

"Material Agreements" shall mean all agreements, documents, contracts, indentures and instruments with respect to which a default, breach or termination thereof would reasonably be expected to result in a Material Adverse Effect.

"Material Indebtedness" shall mean (i) any Indebtedness (other than the Notes) of the Issuer or any of its Subsidiaries individually or in an aggregate committed or outstanding principal amount exceeding $12,500,000, (ii) the First Lien Obligations and (iii) the Senior Notes or any Permitted Refinancing Indebtedness.

"Material Permitted Seller Financing" shall mean any Permitted Seller Financing individually or in an aggregate committed or outstanding principal amount exceeding $10,000,000.

"Maturity Date" shall mean, with respect to the Notes, the earlier of: (i) August 15, 2020 or, if all of the Senior Notes shall have been refinanced in full with the proceeds of Permitted Refinancing Indebtedness prior to August 15, 2020, June 30, 2022; and (ii) the date on which the principal amount of all outstanding Notes has been declared or automatically has become due and payable (whether by acceleration or otherwise).

"Medicaid" shall mean, collectively, the healthcare assistance program established by Title XIX of the Social Security Act (42 U.S.C., Chapter 7, subchapter XIX, §§1396 et seq.) and all laws, rules, regulations, manuals, orders, guidelines or requirements (whether or not having the force of law) pertaining to such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

"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., Chapter 7, subchapter XVIII, §§1395 et seq.) and all laws, rules, regulations, manuals, orders or guidelines (whether or not having the force of law) pertaining to such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

"Moody's" shall mean Moody's Investors Service, Inc.

"Mortgaged Property" shall mean, individually or collectively, any Real Estate that is subject to a Mortgage.

"Mortgage" shall mean each mortgage, deed of trust, deed to secure debt or other real estate security documents delivered by any Note Party to the Collateral Agent from time to time, all in form and substance reasonably satisfactory to the Collateral Agent and the Required Purchasers.

"Multiemployer Plan" shall mean any "multiemployer plan" as defined in Section 4001(a)(3) of ERISA, which is contributed to by (or to which there is or may be an obligation to contribute of) the Issuer, any of its Subsidiaries, or an ERISA Affiliate, and each such plan for the look-back period during which the Issuer, any of its Subsidiaries, or an ERISA Affiliate continues to be subject to liability, including contingent liability, for the plan under Title IV of ERISA.

"Net Cash Proceeds" shall mean cash proceeds (including proceeds of any insurance policy) received by any Note Party, net of (i) customary, reasonable and documented (in summary form) fees and commissions paid or payable in connection therewith, including reasonable and documented (in summary form) attorneys' fees, accountants' fees, broker's fees and investment banking fees, (ii) other reasonable, documented (in summary form) and customary fees and expenses paid or payable in connection therewith to the extend paid or payable to a Person that is not an Affiliate of the Issuer, (iii) Taxes (including transfer and similar taxes) paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), to the extent properly attributable to such Prepayment Event, (iv) with respect to Net Cash Proceeds received as a result of a Prepayment Event under Section 2.9(a), (a) amounts required to be applied to the repayment of Indebtedness secured by a Lien not prohibited hereunder on any asset which is the subject of such Prepayment Event and prepayment penalties required to be paid under the terms governing such Indebtedness, (b) reserves required to be established in accordance with GAAP or any applicable documentation governing any such Prepayment Event, including escrow amounts, indemnification obligations, purchase price adjustments and other similar retained liabilities, and (c) amounts required to be paid to any party having superior rights to such proceeds pursuant to clause (ii) of the definition of Requirements of Law and (v) with respect to Net Cash Proceeds received as a result of a Prepayment Event under Section 2.9(b), underwriting discounts and other customary debt incurrence costs.

"Net Mark-to-Market Exposure" of any Person shall mean, as of any date of determination with respect to any Hedging Obligation, the excess (if any) of all unrealized losses over all unrealized profits of such Person arising from such Hedging Obligation. "Unrealized losses" shall mean the fair market value of the cost to such Person of replacing the Hedging Transaction giving rise to such Hedging Obligation as of the date of determination (assuming such Hedging Transaction were to be terminated as of that date), and "unrealized profits" shall mean the fair market value of the gain to such Person of replacing such Hedging Transaction as of the date of determination (assuming such Hedging Transaction were to be terminated as of that date).

"Non-Defaulting Purchaser" shall mean, at any time, a Purchaser that is not a Defaulting Purchaser.

"Non-U.S. Plan" shall mean any plan, fund (including, without limitation, any superannuation fund) or other similar program established, contributed to (regardless of whether through direct contributions or through employee withholding) or maintained outside the United States by the Issuer or one or more of its Subsidiaries primarily for the benefit of employees of the Issuer or such Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement, or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

"Note Documents" shall mean, collectively, this Agreement, the Collateral Documents, the First Lien/Second Lien Intercreditor Agreement, the ABDC Intercreditor Agreement, any other intercreditor agreement or subordination agreement entered into with the Collateral Agent or any Purchaser in connection with the Obligations, the Fee Letters, all Notices of Conversion/Continuation, all Compliance Certificates, the Notes, the Warrant Purchase Agreement, the Warrant Agreement and any and all other instruments, agreements, documents and writings executed by or in favor of the Collateral Agent or any Purchaser in connection with any of the foregoing.

"Note Parties" shall mean the Issuer and the Subsidiary Note Parties.

"Notes" shall mean the Initial Notes and the Delayed Draw Notes.

"Notice of Conversion/Continuation" shall have the meaning set forth in Section 2.4(b).

"Obligations" shall mean all amounts owing by the Note Parties to the Collateral Agent or any Purchaser pursuant to or in connection with this Agreement or any other Note Document or otherwise with respect to any Note including, without limitation, all principal, interest (including any interest accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or like proceeding relating to the Issuer, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), reimbursement obligations, fees, expenses, indemnification and reimbursement payments, costs and expenses (including all fees and expenses of counsel to the Collateral Agent and any Purchaser payable by the Note Parties pursuant to this Agreement or any other Note Document), whether direct or indirect, absolute or contingent, liquidated or unliquidated, now existing or hereafter arising hereunder or thereunder.

"OFAC" shall mean the U.S. Department of the Treasury's Office of Foreign Assets Control.

"Off-Balance Sheet Liabilities" of any Person shall mean (i) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (ii) any liability of such Person under any sale and leaseback transactions that do not create a liability on the balance sheet of such Person, (iii) any Synthetic Lease Obligation or (iv) any 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 sheet of such Person.

"Order" means any order, award, decision, injunction, judgment, ruling, decree, charge, writ, subpoena or verdict entered, issued, made or rendered by any Governmental Authority or arbitrator.

"OSHA" shall mean the Occupational Safety and Health Act of 1970, as amended from time to time, and any successor statute.

"Other Connection Taxes" shall mean, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Note Document, or sold or assigned an interest in any Note or Note Document).

"Other Taxes" shall mean any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made hereunder or under any other Note Document or from the execution, delivery, performance or enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement or any other Note Document, except any such Taxes imposed with respect to an assignment (other than an assignment described in Section 2.20), participation or other transfer.

"Parent Company" shall mean, with respect to a Purchaser, the "bank holding company" as defined in Regulation Y, if any, of such Purchaser, and/or any Person owning, beneficially or of record, directly or indirectly, a majority of the shares of such Purchaser.

"Participant" shall have the meaning set forth in Section 10.4(d).

"Participant Register" shall have the meaning set forth in Section 10.4(d).

"Patent" shall have the meaning assigned to such term in the Guaranty and Security Agreement.

"Patent Security Agreement" shall mean any Patent Security Agreement executed by a Note Party owning Patents in favor of the Collateral Agent for the benefit of the Secured Parties, both on the Closing Date and thereafter.

"Patriot Act" shall mean the USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109-177 (signed into law March 9, 2006)), as amended and in effect from time to time.

"PBGC" shall mean the U.S. Pension Benefit Guaranty Corporation, as referred to and defined in ERISA and any successor entity performing similar functions.

"Permitted Acquisition" shall mean any Acquisition of a Target, in each instance, to the extent that each of the following conditions shall have been satisfied:

(i) no Default or Event of Default shall then exist or would exist after giving effect thereto;

(ii) such Acquisition shall not be hostile and shall have been approved by the Governing Body and, to the extent applicable, stockholders or other equityholders of the Target;

(iii) (x) if Consolidated EBITDA for the period of four Fiscal Quarters ended on the last day of the most recent Fiscal Quarter prior to the date of such Acquisition for which financial statements have been (or were required to be) delivered hereunder is less than $50,000,000, (A) not less than 75% of the consideration for such Acquisition shall be paid for with Internally Generated Cash, the proceeds of capital contributions and/or the proceeds of equity issuances and (B) not more than 25% of the consideration for such Acquisition may be paid for with a combination of Permitted Seller Financing, earn-outs or other deferred or contingent purchase consideration (provided that, for the avoidance of doubt, for purposes of this clause (iii)(x), the maximum amount of all earn-outs and other deferred or contingent purchase consideration shall be deemed fully earned and payable on the date of the consummation of such Acquisition and shall be included in the determination of the consideration for such Acquisition) and/or the proceeds of Delayed Draw Notes, and (y) if Consolidated EBITDA for the period of four Fiscal Quarters ended on the last day of the most recent Fiscal Quarter prior to the date of such Acquisition for which financial statements have been (or were required to be) delivered hereunder is greater than or equal to $50,000,000, (A) not less than 50% of the consideration for such Acquisition shall be paid for with Internally Generated Cash, the proceeds of capital contributions and/or the proceeds of equity issuances and (B) not more than 50% of the consideration for such Acquisition may be paid for with a combination of Permitted Seller Financing, earn-outs or other deferred or contingent purchase consideration (provided that, for the avoidance of doubt, for purposes of this clause (iii)(y), the maximum amount of all earn-outs and other deferred or contingent purchase consideration shall be deemed fully earned and payable on the date of the consummation of such Acquisition and shall be included in the determination of the consideration for such Acquisition) and/or the proceeds of Delayed Draw Notes;

(iv) the Issuer shall be in pro forma compliance with the covenant set forth in Article VI after giving effect to such Acquisition, calculated as of the last day of the most recent Fiscal Quarter for which financial statements have been (or were required to be) delivered hereunder and for the period of four Fiscal Quarters ending on such date, as evidenced by a certificate of a Responsible Officer of the Issuer delivered to the Collateral Agent and the Purchasers not less than two (2) days prior to the consummation of such Acquisition;

(v) the Person acquiring such Target (if such acquisition is of the type described in clause (b) of the definition of Acquisition) or the Target (if such acquisition is of the type described in clause (a) of the definition of Acquisition), as applicable, shall be organized in any state of the United States or in Washington, D.C.;

(vi) the Person acquiring such Target (if such Acquisition is of the type described in clause (b) of the definition of Acquisition) or the Target (if such Acquisition is of the type described in clause (a) of the definition of Acquisition), as applicable, and each of its Subsidiaries shall be become a Subsidiary Note Party in accordance with the provisions of Section 5.12;

(vii) the Target shall be engaged solely in the business of home infusion services (i.e., the preparation, delivery, administration and clinical monitoring of pharmaceutical treatments that are administered to a patient via intravenous, subcutaneous, intramuscular, intraspinal and enteral methods) or a line of business reasonably related, ancillary or incidental thereto;

(viii) the consideration for such Acquisition shall be paid for solely with Internally Generated Cash, the proceeds of capital contributions, the proceeds of equity issuances, the proceeds of the Delayed Draw Notes, Permitted Seller Financing or earn-outs or other deferred or contingent purchase consideration;

(ix) after giving effect to such Acquisition, the amount available to be funded pursuant to the Delayed Draw Notes plus cash and Cash Equivalents (other than Restricted Cash) of the Issuer and its Subsidiaries is not less than $20,000,000;

(x) such Acquisition shall not result in the formation of any Specified Strategic Joint Venture; and

(xi) the Issuer shall have (A) notified the Collateral Agent and the Purchasers of such proposed Acquisition at least fifteen (15) days (or such shorter period as the Required Purchasers may reasonably agree) prior to the consummation thereof, (B) furnished to the Collateral Agent and the Purchasers at least ten (10) days (or such shorter period as the Required Purchasers may reasonably agree) prior to the consummation thereof (1) an executed term sheet and/or letter of intent (setting forth in reasonable detail the terms and conditions of such Acquisition) and, at the request of the Required Purchasers, such other information and documents that the Required Purchasers may reasonably request, including, without limitation, all regulatory and third-party approvals required under the terms of the Acquisition documents, (2) a description of the proposed Acquisition and a due diligence report (to the extent available) and (3) for any Acquisition with total consideration in excess of $50,000,000 (for the avoidance of doubt, for purposes of this clause (3), such total consideration shall include any Permitted Seller Financing and the maximum amount of all earn-outs and other deferred or contingent purchase consideration, which shall be deemed fully earned and payable on the date of the consummation of such Acquisition) (or to the extent otherwise reasonably available to the Issuer in connection with such Acquisition), a quality of earnings report of such Target by a nationally recognized independent accounting firm or such other accounting firm reasonably satisfactory to the Required Purchasers, (C) furnished to the Collateral Agent and the Purchasers at least five (5) days (or such shorter period as the Required Purchasers may reasonably agree) prior to the consummation thereof (1) drafts of the respective material agreements, documents or instruments pursuant to which such Acquisition is to be consummated (including, without limitation, any related management, non-compete, employment, option or other material agreements), any schedules to such agreements, documents or instruments, all other material ancillary agreements, instruments and documents to be executed or delivered in connection therewith, and copies of environmental assessments and (2) pro forma financial statements of the Issuer and its Subsidiaries after giving effect to the consummation of such Acquisition and (D) furnished to the Collateral Agent and the Purchasers no later than the date of consummation of such Acquisition executed counterparts of the respective material agreements, documents or instruments pursuant to which such Acquisition is to be consummated (including, without limitation, any related management, non-compete, employment, option or other material agreements), any schedules to such agreements, documents or instruments, all other material ancillary agreements, instruments and documents to be executed or delivered in connection therewith, and copies of environmental assessments.

"Permitted Business" shall mean owning, operating, managing and maintaining infusion services, home health care, hospice services, respiratory care services, pharmacy benefit management services, durable medical equipment services, or other healthcare services, in each case, together with any other businesses as are reasonably related, ancillary or incidental thereto.

"Permitted Encumbrances" shall mean:

(i) Liens imposed by law for taxes, fees, assessments or other governmental charges which are not yet due or which are being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves are being maintained in accordance with GAAP;

(ii) statutory Liens of landlords, carriers, warehousemen, mechanics, materialmen and other Liens imposed by law in the ordinary course of business for amounts not yet delinquent for more than sixty (60) days or which are being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves are being maintained in accordance with GAAP;

(iii) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(iv) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature or to secure liability to insurance carriers, in each case in the ordinary course of business;

(v) judgment and attachment liens not giving rise to an Event of Default or Liens created by or existing from any litigation or legal proceeding that are currently being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves are being maintained in accordance with GAAP;

(vi) customary rights of set-off, revocation, refund or chargeback under deposit agreements or under the Uniform Commercial Code or common law of banks or other financial institutions where the Issuer or any of its Subsidiaries maintains deposits (other than deposits intended as cash collateral) in the ordinary course of business;

(vii) easements, zoning restrictions, rights-of-way, minor defects in title, and similar encumbrances on Real Estate imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of the Issuer and its Subsidiaries taken as a whole;

(viii) Liens in favor of collecting banks arising by operation of law under Section 4-210 of the UCC or, with respect to collecting banks located in the State of New York, under Section 4-208 of the UCC, or securing reimbursement obligations in respect of documentary letters of credit or bankers' acceptances in the ordinary course of business;

(ix) Liens arising out of consignment or similar arrangements for the sale of goods entered into by the Issuer or any of its Subsidiaries in the ordinary course of business;

(x) Liens in favor of customs and revenue authorities arising as a matter of law which secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(xi) Liens on insurance policies and the proceeds thereof in favor of the provider of such policies securing the financing of the premiums with respect thereto;

(xii) leases, subleases, non-exclusive licenses or non-exclusive sublicences on the property covered thereby, in each case, in the ordinary course of business which do not (i) materially interfere with the business of the Issuer and its Subsidiaries, taken as a whole, or (ii) secure any Indebtedness;

(xiii) any interest of title of a lessor under any lease entered into by the Issuer or any of its Subsidiaries in the ordinary course of business as a tenant and covering only the assets so leased; and

(xiv) Liens evidenced by precautionary UCC financing statements relating to operating leases, bailments and consignments of personal property;

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness for borrowed money.

"Permitted Refinancing Indebtedness" shall mean any Indebtedness issued in exchange for, or the Net Cash Proceeds of which are used to extend, refinance, renew, replace, defease or refund, the Senior Notes (or previous refinancings thereof constituting Permitted Refinancing Indebtedness ("Refinanced Senior Notes Indebtedness")); provided that (a) the principal amount of such Permitted Refinancing Indebtedness does not exceed the principal amount of the Senior Notes (or Refinanced Senior Notes Indebtedness) being refinanced plus unpaid accrued interest, fees and premiums thereon plus fees and expenses incurred in connection with such refinancing, (b)(i) the cash portion of the non-default interest rate with respect to such Permitted Refinancing Indebtedness does not exceed 10.0% per annum and (ii) the aggregate non-default Effective Yield with respect to such Permitted Refinancing Indebtedness does not exceed 15.0% per annum (which, for purposes of this clause (b)(ii), shall be calculated exclusive of any original issue discount or other upfront payments in an amount not in excess of 2.0% of the aggregate principal amount of such Permitted Refinancing Indebtedness (the "Permitted Refinancing Indebtedness OID Cap") payable in connection therewith and inclusive of any original issue discount or other upfront payments in excess of the Permitted Refinancing Indebtedness OID Cap payable in connection therewith, but otherwise in accordance with the definition of "Effective Yield"), (c) the final maturity date of such Permitted Refinancing Indebtedness is on or after six months after June 30, 2022, (d) such Permitted Refinancing Indebtedness is unsecured and is junior or pari passu in payment priority with the Obligations and the First Lien Obligations, (e) no Permitted Refinancing Indebtedness shall have obligors that are not obligated with respect to the Senior Notes, the Obligations or the First Lien Obligations, (f) the documentation governing such Permitted Refinancing Indebtedness shall not include any amortization or mandatory redemption, repurchase or repayment provisions (other than customary provisions relating to change of control and asset sale redemption offers) and (g) the Weighted Average Life to Maturity of such Permitted Refinancing Indebtedness is greater than or equal to the greater of (x) the Weighted Average Life to Maturity of the Senior Notes (or any Refinanced Senior Notes Indebtedness) and (y) the Weighted Average Life to Maturity of the Notes.

"Permitted Seller Financing" shall mean, with respect to any Permitted Acquisition, subordinated unsecured Indebtedness provided by the seller of the applicable Target; provided that:

(i) the obligations in respect of such Indebtedness are subordinated in right of payment to the Obligations and the First Lien Obligations on terms acceptable to the Required Purchasers and the Required Purchasers (as defined in the First Lien Note Purchase Agreement);

(ii) the obligations in respect of such Indebtedness shall be unsecured;

(iii) there shall be no obligors (including guarantors) in respect of such Indebtedness other than (x) in the case of an Acquisition of the type described in clause (b) of the definition of Acquisition, the Person acquiring the assets of the applicable Target, (y) in the case of an Acquisition of the type described in clause (a) of the definition of Acquisition, the applicable Target (and for the avoidance of doubt, no subsidiaries of the applicable Target shall be obligors) and (z) in each case, any parent company of the Person acquiring such asset or Target, which parent company (A) is a newly-formed holding company that holds no material assets, and has no material liabilities, other than equity interests in the Person acquiring such assets or Target and (B) complies with the provisions of Section 5.12 of this Agreement;

(iv) the documentation governing such Indebtedness shall not include any (x) representations and warranties (other than basic corporate representations and warranties and representations and warranties concerning the enforceability of the agreements governing the such financing), covenants (other than customary affirmative (e.g., corporate existence, insurance and compliance with laws) and reporting covenants), which in no event shall be more restrictive than the representations and warranties and covenants contained in the Note Documents, or (y) indemnities;

(v) the documentation governing such Indebtedness shall not require any amortization or mandatory prepayments; and

(vi) (w) the interest rate with respect to such Indebtedness, exclusive of any default interest rate margin (which shall be customary and in any event shall not exceed 2.0% per annum), shall not exceed 10.0% per annum, (x) there shall be no original issue discount (except to the extent of original issue discount issued in respect of an accreting obligation, which original issue discount shall not result in, together with any other interest (other than default interest) payable in respect of such Indebtedness, an interest rate in excess of that permitted pursuant to clause (w) above) or other upfront payments in connection with such Indebtedness, (y) interest payments shall be made no more frequently than quarterly and (z) no cash interest payments shall be permitted at any time that any Default or Event of Default is continuing.

"Permitted Third Party Bank" shall mean any bank or other financial institution with whom any Note Party maintains (i) a Controlled Account and with whom an Account Control Agreement has been executed or (ii) a Government Receivables Account and with whom a Government Receivables Account Agreement has been executed. As of the Closing Date, each of the banks and other financial institutions that are identified on Schedule 4.16 as an institution at which a Controlled Account or a Government Receivables Account is maintained by any Note Party shall be deemed to be a Permitted Third Party Bank.

"Person" shall mean any individual, partnership, firm, corporation, association, joint venture, limited liability company, trust or other entity, or any Governmental Authority.

"PIK Option" shall have the meaning set forth in Section 2.10(a).

"Plan" shall mean any "employee pension benefit plan" as defined in Section 3 of ERISA (other than a Multiemployer Plan) maintained or contributed to by (or to which there is or may be an obligation to contribute of) the Issuer, any of its Subsidiaries, or an ERISA Affiliate, and each such plan for the look-back period during which the Issuer, any of its Subsidiaries, or an ERISA Affiliate continues to be subject to liability, including contingent liability, for the plan under Title IV of ERISA.

"Prepayment Event" shall mean any sale, lease, assignment, transfer or other disposition by the Issuer or any of its Subsidiaries of any assets or property pursuant to Section 7.6(e) or Section 7.6(f).

"Prepayment Premium" shall mean, with respect to any optional prepayment of the Notes pursuant to Section 2.8(a), any mandatory prepayment of the Notes pursuant to Section 2.9(a) or (b) or any repayment of the Notes following the acceleration thereof pursuant to Section 8.1, (a) at any time prior to the third anniversary of the Closing Date, an amount equal to the Applicable Premium with respect to the principal amount of the Notes so prepaid or repaid; (b) at any time on or after the third anniversary of the Closing Date and prior to the fourth anniversary of the Closing Date, an amount equal to 4.0% of the principal amount of the Notes so prepaid or repaid; (c) at any time on or after the fourth anniversary of the Closing Date and prior to the fifth anniversary of the Closing Date, an amount equal to 2.0% of the principal amount of the Notes so prepaid or repaid; and (d) at any time on or after the fifth anniversary of the Closing Date, an amount equal to 0.0% of the principal amount of the Notes so prepaid or repaid.

"Profit Plan" shall mean, for any calendar year, an annual operating plan for the Issuer and its Subsidiaries, on a consolidated basis, setting forth (i) a statement of all material assumptions on which such annual operating plan is based, (ii) quarterly balance sheets, income statements and statements of cash flows for such calendar year, (iii) sales, gross profits, operating expenses, operating profit, cash flow projections, all prepared on the same basis and in similar detail as that on which operating results are reported (and in the case of cash flow projections, representing management's good faith estimates of future financial performance based on historical performance), and including plans for Capital Expenditures and facilities.

"Pro Forma Basis" shall mean (a) with respect to any Person, business, property or asset sold, transferred or otherwise disposed of, the exclusion from "Consolidated EBITDA" of the EBITDA (calculated in a manner substantially consistent with the definition of "Consolidated EBITDA" and giving effect to any adjustments made in accordance with such definition) for such Person, business, property or asset so disposed of during such period as if such disposition had been consummated on the first day of the applicable period and (b) with respect to any Target acquired in a Permitted Acquisition, the addition to "Consolidated EBITDA" of the EBITDA (calculated in a manner substantially consistent with the definition of "Consolidated EBITDA" but without giving effect to any adjustments made in accordance with such definition and, for the avoidance of doubt, not including any synergies or other cost savings) of such Target so acquired during such period as if such acquisition had been consummated on the first day of the applicable period, in each case, in accordance with GAAP.

"Pro Rata Share" shall mean with respect to any Commitment, Delayed Draw Commitment or Note of any Purchaser at any time, a percentage, the numerator of which shall be such Purchaser's Commitment or Delayed Draw Commitment, as applicable (or if such Commitment or Delayed Draw Commitment, as applicable, has been terminated or expired or the Notes have been declared to be due and payable, such Purchaser's Notes), and the denominator of which shall be the sum of all Commitments or Delayed Draw Commitments, as applicable, of all Purchasers (or if such Commitments or Delayed Draw Commitments, as applicable, have been terminated or expired or the Notes have been declared to be due and payable, all Notes of all Purchasers).

"Purchasers" shall have the meaning set forth in the introductory paragraph hereof and shall include each Purchaser that joins this Agreement pursuant to Section 10.4 and each Replacement Purchaser that joins this Agreement pursuant to Section 2.20.

"Real Estate" shall have the meaning set forth in Section 4.11(a).

"Real Estate Documents" shall mean, collectively, with respect to any Real Estate, (i) a Mortgage duly executed by each applicable Note Party, together with (A) title insurance policies in amounts reasonably satisfactory to the Required Purchasers (but not to exceed 100% of the fair market value of such Real Estate in any jurisdiction that imposes a material mortgage recording tax or 110% otherwise), current as-built ALTA/ACSM Land Title surveys certified to the Collateral Agent, zoning letters, building permits and certificates of occupancy, in each case relating to such Real Estate and reasonably satisfactory in form and substance to the Required Purchasers, (B) (x) "Life of Loan" Federal Emergency Management Agency Standard Flood Hazard determinations, (y) notices, in the form required under the Flood Insurance Laws, about special flood hazard area status and flood disaster assistance duly executed by each Note Party, and (z) if any improved real property encumbered by any Mortgage is located in a special flood hazard area, a policy of flood insurance that (1) covers such improved real property, (2) is written in an amount not less than the outstanding principal amount of the Indebtedness secured by such Mortgage reasonably allocable to such real property or the maximum limit of coverage made available with respect to the particular type of property under the Flood Insurance Laws, whichever is less, and (3) is otherwise on terms satisfactory to the Collateral Agent and the Required Purchasers and, (C) evidence that counterparts of such Mortgages have been recorded in all places to the extent necessary or desirable, in the reasonable judgment of the Required Purchasers, to create a valid and enforceable first priority Lien (subject to Permitted Encumbrances and Specified Permitted Liens) on such Real Estate in favor of the Collateral Agent for the benefit of the Secured Parties (or in favor of such other trustee as may be required or desired under local law), (D) an opinion of counsel in each state in which such Real Estate is located in form and substance and from counsel reasonably satisfactory to the Required Purchasers, (E) a duly executed Environmental Indemnity with respect thereto, and (F) such other reports, documents, instruments and agreements as the Required Purchasers shall reasonably request, each in form and substance reasonably satisfactory to Required Purchasers.

"Recipient" shall mean, as applicable, (a) the Collateral Agent and (b) any Purchaser.

"Regulation D" shall mean Regulation D of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.

"Regulation T" shall mean Regulation T of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.

"Regulation U" shall mean Regulation U of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.

"Regulation X" shall mean Regulation X of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.

"Regulation Y" shall mean Regulation Y of the Board of Governors of the Federal Reserve System, as the same may be in effect from time to time, and any successor regulations.

"Reimbursement Approvals" shall mean any and all certifications, provider or supplier numbers, provider or supplier agreements (including Medicaid provider or supplier numbers, Medicaid provider or supplier agreements, Medicare provider or supplier numbers, and Medicare provider or supplier agreements), participation agreements, Accreditations, and/or any other agreements with or approvals by Medicaid, Medicare, 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.

"Related Parties" shall mean, with respect to any specified Person, such Person's Affiliates and the respective managers, administrators, trustees, partners, directors, officers, employees, agents, advisors, legal counsel, consultants or other representatives of such Person and such Person's Affiliates.

"Release" shall mean any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or within any building, structure, facility or fixture.

"Repricing Transaction" shall mean (a) any prepayment, repayment or refinancing of any outstanding First Lien Notes with the proceeds of, or any conversion of such First Lien Notes into, any Indebtedness which increases the Effective Yield applicable to the outstanding First Lien Notes and (b) any amendment to the First Lien Note Purchase Agreement or any other Note Document (as defined in the First Lien Note Purchase Agreement) which increases the Effective Yield applicable to the outstanding First Lien Notes (the amount of any such increase, expressed as a percentage *per annum*, the "Increased Yield Amount").

"Required Purchasers" shall mean, at any time, Purchasers holding more than 50% of the sum of (a) the aggregate outstanding principal amount of the Initial Notes at such time and (b) the aggregate principal amount of the Delayed Draw Commitments at such time (or, if the Delayed Draw Commitments have been terminated, the aggregate outstanding principal amount of the Delayed Draw Notes at such time); provided that, to the extent there are two or more Purchasers that each hold at least 5% of the sum of (x) the aggregate outstanding principal amount of the Initial Notes and (y) the aggregate principal amount of the Delayed Draw Commitments, if any (or, if the Delayed Draw Commitments have been terminated, the aggregate outstanding principal amount of the Delayed Draw Notes) at any time, Required Purchasers shall mean at least two Purchasers together holding more than 50% of the sum of (x) the aggregate outstanding principal amount of the Initial Notes and (y) the aggregate principal amount of Delayed Draw Commitments, if any (or, if the Delayed Draw Commitments have been terminated, the aggregate outstanding principal amount of the Delayed Draw Notes) at such time; provided, further, that, for purposes of the foregoing proviso, a Purchaser together with all of such Purchaser's Affiliates and Approved Funds shall be deemed to constitute a single Purchaser; provided, further, that, to the extent that any Purchaser is a Defaulting Purchaser, such Defaulting Purchaser and all of the Notes held by and Delayed Draw Commitments of such Defaulting Purchaser shall be excluded for purposes of determining Required Purchasers.

"Requirement of Law" for any Person shall mean (i) the articles or certificate of incorporation, bylaws, partnership certificate and agreement, or limited liability company certificate of organization and agreement, as the case may be, and other organizational and governing documents of such Person, and (ii) any law, treaty, rule or regulation, or determination of a Governmental Authority, including, without limitation any Healthcare Laws, 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.

"Responsible Officer" shall mean any of the president, the chief executive officer, the chief operating officer, the chief financial officer, the general counsel, the treasurer or a vice president of the Issuer or such other representative of the Issuer as may be designated in writing by any one of the foregoing with the consent of the Required Purchasers (such consent not to be unreasonably withheld, conditioned or delayed). With respect to any Person that is a limited liability company or a limited partnership, such Person's managing member, sole member, sole manager or general partner, as the case may be, shall constitute a Responsible Officer.

"Responsible Officer of the Collateral Agent" shall mean an officer within Corporate Trust Services who shall have direct responsibility for the administration of this Agreement.

"Restricted Cash" shall mean, as of any date, all cash and Cash Equivalents held by the Issuer and its Subsidiaries that are legally or contractually restricted from being used to repay general obligations of the Issuer or any Subsidiary of the Issuer (including the Obligations) (provided that the terms of this Agreement, the other Note Documents and the First Lien Note Documents shall not be deemed to contractually restrict the use of cash and Cash Equivalents by the Issuer and its Subsidiaries) or are otherwise subject to a Lien (except Liens created under the Collateral Documents, the First Lien Collateral Documents and non-consensual Liens that arise by operation of law).

"Restricted Payment" shall mean, for any Person, (i) any dividend or distribution on any class of its Capital Stock, or (ii) any payment on account of, or the setting aside of assets for a sinking or other analogous fund for, the purchase, redemption, retirement, defeasance or other acquisition of (a) any shares of its Capital Stock, (b) any Subordinated Debt, (c) any options, warrants or other rights to purchase such Capital Stock or such Indebtedness, whether now or hereafter outstanding, or (d) any payment of management or similar fees.

"Routine Payor Audit" shall mean any payor audit conducted by a Governmental Authority or a Third Party Payor so long as the potential liability under such payor audit does not exceed $200,000 for each such payor audit.

"S&P" shall mean Standard & Poor's, a division of The McGraw-Hill Companies, Inc.

"Sanctioned Country" shall mean, at any time, a country, territory or region that is, or whose government is, the subject or target of any Sanctions.

"Sanctioned Person" shall mean, at any time, any Person with whom dealings are restricted or prohibited under Sanctions, including (i) any Person listed in any Sanctions-related list of designated Persons maintained by the United States (including by OFAC, the U.S. Department of the Treasury, or the U.S. Department of State), or by the United Nations Security Council, the European Union or any EU member state, Her Majesty's Treasury of the United Kingdom or any other relevant sanctions authority, (ii) any Person located, operating, organized or resident in a Sanctioned Country or (iii) any Person owned or controlled, directly or indirectly, by any such Person described in clause (i) or (ii) of this definition.

"Sanctions" shall mean sanctions or trade embargoes enacted, imposed, administered or enforced from time to time by (i) the U.S. government, including those administered by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), U.S. Department of State, or U.S. Department of Commerce, (ii) the United Nations Security Council, the European Union or any of its member states, Her Majesty's Treasury of the United Kingdom, (iii) Canada (or any provincial government) or (iv) any other relevant sanctions authority.

"Secured Parties" shall mean the Collateral Agent and the Purchasers.

"Securities Act" shall mean the Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

"Senior Notes" shall mean the unsecured 8.875% Senior Notes due 2021 issued by the Issuer pursuant to the Senior Notes Indenture, as amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms hereof and thereof.

"Senior Notes Indenture" shall mean that certain Indenture dated as of February 11, 2014, by and among the Issuer, the guarantors party thereto, and U.S. Bank National Association, as trustee, as amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms hereof and thereof.

"Solvent" shall mean, with respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including subordinated and contingent liabilities, of such Person; (b) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts and liabilities, including subordinated and contingent liabilities as they become absolute and matured; (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature; and (d) such Person is not engaged in a business or transaction, and is not about to engage in a business or transaction, for which such Person's property would constitute an unreasonably small capital. The amount of contingent liabilities (such as litigation, guaranties and pension plan liabilities) at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, represents the amount that would reasonably be expected to become an actual or matured liability.

"Specified Permitted Liens" shall mean (a) nonconsensual Liens arising by operation of law (including Permitted Encumbrances, but excluding Permitted Encumbrances securing Indebtedness), (b) Liens permitted by Section 7.2(b), Section 7.2(e), Section 7.2(f) (except to the extent such Liens are required to be subordinated to the Liens securing the Obligations pursuant to such Section 7.2(f)) and Section 7.2(g) and (c) Liens on cash collateral for letters of credit permitted pursuant to Section 7.1(a)(xix).

"Specified Strategic Joint Venture" shall mean any Subsidiary (other than a Subsidiary formed for the purpose of holding assets of the Issuer and its Subsidiaries constituting the Issuer's and its Subsidiaries' PBM line of business) formed by the Issuer or any of its Subsidiaries with one or more third parties for the purpose of engaging in any Permitted Business, including any hospital joint venture or other joint venture providing pharmacy benefit management services.

"Stark Law" shall mean Section 1877 of the Social Security Act, as codified at 42 U.S.C. Section 1395nn (Prohibition Against Certain Referrals), as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

"Subordinated Debt" shall mean any Indebtedness of the Issuer or any Subsidiary that is by its terms subordinated in right of payment to the prior payment of the Obligations and the First Lien Obligations in a manner reasonably acceptable to the Required Purchasers and the Required Purchasers (as defined in the First Lien Note Purchase Agreement).

"Subsidiary" shall mean, with respect to any Person (the "parent") at any date, any corporation, partnership, joint venture, limited liability company, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, partnership, joint venture, limited liability company, association or other entity (i) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (ii) that is, as of such date, otherwise controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Unless otherwise indicated, all references to "Subsidiary" hereunder shall mean a Subsidiary of the Issuer.

"Subsidiary Note Party" shall mean any Subsidiary that executes or becomes a party to the Guaranty and Security Agreement (other than any Specified Strategic Joint Venture).

"Synthetic Lease" shall mean a lease transaction under which the parties intend that (i) the lease will be treated as an "operating lease" by the lessee pursuant to Accounting Standards Codification Sections 840-10 and 840-20, as amended, and (ii) the lessee will be entitled to various tax and other benefits ordinarily available to owners (as opposed to lessees) of like property.

"Synthetic Lease Obligations" shall mean, with respect to any Person, the sum of (i) all remaining rental obligations of such Person as lessee under Synthetic Leases which are attributable to principal and, without duplication, (ii) all rental and purchase price payment obligations of such Person under such Synthetic Leases assuming such Person exercises the option to purchase the lease property at the end of the lease term.

"Target" shall mean any other Person or business unit or asset group of any other Person acquired or proposed to be acquired in a Permitted Acquisition.

"Taxes" shall mean any and all present or future taxes, levies, imposts, duties, deductions, assessments, fees, charges or withholdings imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Third Party Payors" shall mean 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 third party arrangements, plans or programs.

"Third Party Payor Arrangements" shall mean arrangements, plans or programs with Third Party Payors for payment or reimbursement in connection with health care services, products or supplies.

"Trademark" shall have the meaning assigned to such term in the Guaranty and Security Agreement.

"Trademark Security Agreement" shall mean any Trademark Security Agreement executed by a Note Party owning registered Trademarks or applications for Trademarks in favor of the Collateral Agent for the benefit of the Secured Parties, both on the Closing Date and thereafter.

"Triggering Event of Default" shall mean an Event of Default of the type described in Section 8.1(a), 8.1(b), 8.1(g), or 8.1(h).

"Type", when used in reference to a Note or an Issuance, refers to whether the rate of interest on such Note, or on the Notes issued pursuant to such Issuance, is determined by reference to the LIBOR Rate or the Base Rate.

"Unfunded Pension Liability" of any Plan shall mean the amount, if any, by which the value of the accumulated plan benefits under the Plan, as determined pursuant to Section 4001(a)(16) of ERISA, determined on a plan termination basis in accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the fair market value of all Plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions).

"Uniform Commercial Code" or "UCC" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the creation or perfection of security interests.

"United States" or "U.S." shall mean the United States of America.

"U.S. Person" shall mean any Person that is a "United States person" as defined in Section 7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" shall have the meaning set forth in Section 2.17(f)(ii).

"Warrant Agreement" shall mean that certain Warrant Agreement, dated as of the Closing Date, among the Issuer and each of the Purchasers (or their designees).

"Warrants" shall have the meaning set forth in Section 3.1(h).

"Warrant Purchase Agreement" shall have the meaning set forth in Section 3.1(h).

"Weighted Average Life to Maturity" shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing (i) the sum of the products obtained by multiplying (x) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (y) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment by (ii) the then outstanding principal amount of such Indebtedness.

"Withdrawal Liability" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Withholding Agent" shall mean the Issuer or any other Note Party, as applicable.

"Working Capital" shall mean, at any date, the sum of (a) all amounts (other than cash and Cash Equivalents) at such date that, in accordance with GAAP, would be classified as "current assets" on a consolidated balance sheet of the Issuer and its consolidated Subsidiaries, minus (b) all amounts (other than the current portion of long-term Indebtedness) at such date that, in accordance with GAAP, would be classified as "current liabilities" on a consolidated balance sheet of the Issuer and its consolidated Subsidiaries.

"Write-Down and Conversion Powers" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.2 Classifications of Notes and Issuances. For purposes of this Agreement, Notes may be classified and referred to by Type (e.g. "Eurodollar Note" or "Base Rate Note"). Issuances also may be classified and referred to by Type (e.g. "Eurodollar Issuance").

Section 1.3 Accounting Terms and Determination. Unless otherwise defined or specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP as in effect from time to time, applied on a basis consistent with the most recent financial statements of the Issuer delivered pursuant to Section 5.1(a) or Section 5.1(b) (subject to any statements made pursuant to Section 5.1(c)(iv)), subject to normal year-end adjustments and the absence of footnote disclosures in the case of interim financial statements; provided that if the Issuer notifies the Purchasers that the Issuer wishes to amend the definition or application of GAAP as used herein to eliminate the effect of any change in GAAP on the operation of any provision of this Agreement (or if the Required Purchasers notify the Issuer that the Required Purchasers wish to make such amendment), then the Issuer's compliance with the provisions of this Agreement shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or this Agreement is amended in a manner satisfactory to the Issuer and the Required Purchasers. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to (a) any election under Accounting Standards Codification Section 825-10 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of any Note Party or any Subsidiary of any Note Party at "fair value", as defined therein or (b) any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification Section 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof. In addition, all financial covenants contained herein shall be calculated without giving effect to any election under Statement of Financial Accounting Standards 159 (or any similar accounting principle) permitting a Person to value its financial liabilities at the fair value thereof. In addition, notwithstanding anything in this Agreement to the contrary, any change in GAAP occurring after the date hereof that would require operating leases to be treated similarly to capital leases shall not be given effect in the definition of Consolidated EBITDA or Indebtedness or any related definitions or in the computation of any financial ratio or requirement in any of the Note Documents.

Section 1.4 **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". In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the word "to" means "to but excluding". Unless the context requires otherwise (i) 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 it was originally executed or as it may from time to time be amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (ii) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (iii) the words "hereof", "herein" and "hereunder" and words of similar import shall be construed to refer to this Agreement as a whole and not to any particular provision hereof, (iv) all references to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles, Sections, Exhibits and Schedules to this Agreement and (v) all references to a specific time shall be construed to refer to the time in New York, New York, unless otherwise indicated. The words "knowledge of the Issuer" or any like term shall mean the actual knowledge of a Responsible Officer of the Issuer.

ARTICLE II

AMOUNT AND TERMS OF THE COMMITMENTS

Section 2.1 **General Description of Facilities.** Subject to and upon the terms and conditions herein set forth, (a) each Purchaser severally agrees to purchase an Initial Note from the Issuer on the Closing Date in an aggregate principal amount not exceeding such Purchaser's Commitment and (b) the Issuer agrees to issue to each Purchaser with a Delayed Draw Commitment a Delayed Draw Note on the Closing Date in an aggregate principal amount not exceeding such Purchaser's Delayed Draw Commitment.

Section 2.2 **Commitments.**

(a) Subject to the terms and conditions set forth herein, each Purchaser severally and not jointly agrees to purchase from the Issuer, and the Issuer agrees to issue to each such Purchaser, on the Closing Date, a note in the form attached hereto as Exhibit B (each an "Initial Note" and, collectively, the "Initial Notes") in the amount set forth opposite such Purchaser's name on Schedule I under the heading "Note Commitment Amount". The Initial Notes may be, from time to time, Base Rate Notes or Eurodollar Notes. The execution and delivery of this Agreement by the Issuer and the satisfaction or waiver by the Purchasers of all conditions precedent set forth in Section 3.1 shall be deemed to constitute the Issuer's request to the Purchasers to purchase the Initial Notes on the Closing Date. Amounts which are repaid or prepaid on the Initial Notes may not be reborrowed.

(b) Subject to the terms and conditions set forth herein, the Issuer agrees to issue to each Purchaser, on the Closing Date, a note in the form attached hereto as Exhibit C (each a "Delayed Draw Note" and, collectively, the "Delayed Draw Notes") in the amount set forth opposite such Purchaser's name on Schedule I under the heading "Delayed Draw Note Commitment Amount". Subject to the terms and conditions set forth herein, each Purchaser severally and not jointly agrees to make a single Delayed Draw Advance to the Issuer on the Delayed Draw Date in a principal amount not to exceed the Delayed Draw Commitment of such Purchaser; provided that if, for any reason, the full amount of such Purchaser's Delayed Draw Commitment is not fully drawn on the Delayed Draw Date, the undrawn portion thereof shall automatically be terminated. The Delayed Draw Notes may be, from time to time, Base Rate Notes or Eurodollar Notes. Amounts which are repaid or prepaid on the Delayed Draw Notes may not be reborrowed.

Section 2.3 Purchase of Notes and Funding of Delayed Draw Advances.

(a) Each Purchaser will make available each Delayed Draw Advance to be made by it hereunder on the Delayed Draw Date by wire transfer in immediately available funds by 1:00 p.m. to the account of the Issuer designated in the Delayed Draw Advance Request.

(b) No Purchaser shall be responsible for any default by any other Purchaser in its obligations hereunder, and each Purchaser shall be obligated to (i) purchase an Initial Note in an amount not to exceed the amount of such Purchaser's Commitment and (ii) make a Delayed Draw Advance to the Issuer in an amount not to exceed the amount of such Purchaser's Delayed Draw Commitment, in each case, regardless of the failure of any other Purchaser to purchase a Note hereunder.

Section 2.4 Interest Elections.

(a) Each Note initially shall be a Eurodollar Note. Thereafter, the Issuer may elect to convert all (but not less than all) of the outstanding Notes into a different Type or to continue such Notes, all as provided in this Section.

(b) To make an election pursuant to this Section, the Issuer shall give the Purchasers written notice (or telephonic notice promptly confirmed in writing), substantially in the form of Exhibit 2.4 attached hereto (a "Notice of Conversion/Continuation") (x) prior to 12:00 p.m. one (1) Business Day prior to the requested date of a conversion into Base Rate Notes and (y) prior to 12:00 p.m. three (3) Business Days prior to a continuation of or conversion into Eurodollar Notes. Each such Notice of Conversion/Continuation shall be irrevocable and shall specify (i) the effective date of the election made pursuant to such Notice of Conversion/Continuation, which shall be a Business Day and (ii) whether the Notes are to be Base Rate Notes or Eurodollar Notes.

(c) If, on the expiration of any Interest Period in respect of Eurodollar Notes, the Issuer shall have failed to deliver a Notice of Conversion/Continuation, then, unless the Notes are repaid as provided herein, the Issuer shall be deemed to have elected to convert the Notes to Base Rate Notes. The Notes may not be converted into, or continued as, Eurodollar Notes if a Default or an Event of Default exists, unless each of the Purchasers shall have otherwise consented in writing. No conversion of the Eurodollar Notes shall be permitted except on the last day of the Interest Period in respect thereof.

Section 2.5 Termination of Commitments.

(a) The Commitments shall terminate on the Closing Date upon the purchase and sale of the Initial Notes pursuant to Section 2.2(a).

(b) Unless previously terminated, all Delayed Draw Commitments shall terminate on December 29, 2018.

Section 2.6 Repayment of Notes.

(a) The aggregate unpaid principal balance of the Notes (together with accrued and unpaid interest thereon) shall be due and payable on the Maturity Date.

Section 2.7 Evidence of Indebtedness.

(a) Each Purchaser shall maintain in accordance with its usual practice appropriate records evidencing the Indebtedness of the Issuer to such Purchaser evidenced by each Note held by such Purchaser, including the amounts of principal and interest payable thereon and paid to such Purchaser from time to time under this Agreement. The entries made in such records shall be *prima facie* evidence of the existence and amounts of the obligations of the Issuer therein recorded; provided that the failure or delay of any Purchaser in maintaining or making entries into any such record or any error therein shall not in any manner affect the obligation of the Issuer to repay the Notes (both principal and unpaid accrued interest) held by such Purchaser in accordance with the terms of this Agreement.

Section 2.8 Optional Prepayments; Prepayment Premium.

(a) Subject to Section 2.8(b), the Issuer shall have the right at any time and from time to time to prepay the Notes, in whole or in part, by giving written notice (or telephonic notice promptly confirmed in writing) to the Purchasers no later than (i) in the case of any prepayment of Eurodollar Notes, 11:00 a.m. not less than three (3) Business Days prior to the date of such prepayment and (ii) in the case of any prepayment of Base Rate Notes, not less than one (1) Business Day prior to the date of such prepayment. Each such notice shall be irrevocable (provided that such notice (x) may be conditioned upon the happening of an event, in which case, such notice may be revoked to the extent that such event does not occur and (y) may be modified to extend the proposed date of such prepayment specified therein) and shall specify the proposed date of such prepayment and the principal amount of the Notes to be prepaid. If such notice is given, the aggregate amount specified in such notice shall be due and payable on the date designated in such notice, together with accrued interest to such date on the principal amount so prepaid in accordance with Section 2.10(d); provided that if a Eurodollar Note is prepaid on a date other than the last day of an Interest Period applicable thereto, the Issuer shall also pay all amounts required pursuant to Section 2.16. Each partial prepayment of the Notes shall be in a minimum principal amount of $5,000,000 and in increments of $1,000,000 in excess thereof. Each prepayment of the Notes shall be applied in accordance with Section 2.9(d).

(b) In the event that the Issuer prepays any Notes pursuant to clause (a) above, the Issuer shall pay to each applicable Purchaser the applicable Prepayment Premium with respect to the principal amount so prepaid.

Section 2.9 Mandatory Prepayments.

(a) Promptly (but in any event within five (5) Business Days) upon receipt by the Issuer or any of its Subsidiaries of Net Cash Proceeds in excess of $1,000,000 in the aggregate during any Fiscal Year from any Prepayment Event, in each case, which Net Cash Proceeds are received (x) at any time after the First Lien Priority Termination Date but prior to the Second Lien Priority Termination Date or (y) after the Discharge of First Lien Obligations (each capitalized term in the preceding clauses (x) and (y), as defined in the First Lien/Second Lien Intercreditor Agreement), or which Net Cash Proceeds were not applied to prepay the First Lien Obligations as a result of the waiver of the obligation to prepay the First Lien Obligations with such Net Cash Proceeds by the First Lien Purchasers, the Issuer shall prepay the Obligations in an amount equal to such excess Net Cash Proceeds; provided that no prepayment under this Section 2.9(a) shall be required with respect to Net Cash Proceeds from any Prepayment Event so long as no Default or Event of Default is in existence at the time of receipt of such Net Cash Proceeds and, at the election of the Issuer, to the extent that such proceeds are reinvested in the business of the Issuer or any of its Subsidiaries within 365 days (or 366 days in a leap year) following receipt thereof or committed to be reinvested pursuant to a binding contract prior to the expiration of such 365 day (or 366 day in a leap year) period and actually reinvested within 180 days after the date of such binding contract. Any such prepayment shall be applied in accordance with clause (d) of this Section and shall be subject to the payment of the Prepayment Premium pursuant to clause (e) of this Section.

(b) Promptly (but in any event within five (5) Business Days) upon receipt by the Issuer or any of its Subsidiaries of Net Cash Proceeds from any issuance of Indebtedness by the Issuer or any of its Subsidiaries (other than any Indebtedness that is not prohibited to be issued or incurred hereunder), in each case, which Net Cash Proceeds are received (x) at any time after the First Lien Priority Termination Date but prior to the Second Lien Priority Termination Date or (y) after the Discharge of First Lien Obligations (each capitalized term in the preceding clauses (x) and (y), as defined in the First Lien/Second Lien Intercreditor Agreement), or which Net Cash Proceeds were not applied to prepay the First Lien Obligations as a result of the waiver of the obligation to prepay the First Lien Obligations with such Net Cash Proceeds by the First Lien Purchasers, the Issuer shall prepay the Obligations in an amount equal to all such Net Cash Proceeds. Any such prepayment shall be applied in accordance with clause (d) of this Section and shall be subject to the payment of the Prepayment Premium pursuant to clause (e) of this Section.

(c) Commencing with the Fiscal Year ending December 31, 2017, no later than ten (10) days after the date on which the Issuer's annual audited financial statements for such Fiscal Year are required to be delivered pursuant to Section 5.1(a), (i) to the extent that the Consolidated Total Net Leverage Ratio as of the last day of such Fiscal Year is greater than or equal to 3.50:1.00, the Issuer shall prepay the Obligations in an amount equal to (x) 50% of Excess Cash Flow for such Fiscal Year minus (y) the aggregate amount of all voluntary prepayments of the Notes and the First Lien Notes made during such Fiscal Year, and (ii) to the extent that the Consolidated Total Net Leverage Ratio as of the last day of such Fiscal Year is less than 3.50:1.00, the Issuer shall prepay the Obligations in an amount equal to 0% of Excess Cash Flow for such Fiscal Year; provided that no Excess Cash Flow prepayment shall be required hereunder other than, (x) at any time after the First Lien Priority Termination Date but prior to the Second Lien Priority Termination Date or (y) after the Discharge of First Lien Obligations (each capitalized term in the preceding clauses (x) and (y), as defined in the First Lien/Second Lien Intercreditor Agreement). Any such prepayment shall be applied in accordance with clause (d) of this Section. Any such prepayment shall be accompanied by a certificate signed by a Responsible Officer of the Issuer, certifying in reasonable detail the manner in which Excess Cash Flow and the resulting prepayment were calculated, which certificate shall be in form and substance reasonably satisfactory to the Required Purchasers.

(d) Any prepayments made by the Issuer pursuant to clause (a), (b) or (c) of this Section or pursuant to Section 2.8(a) shall be applied as follows: to the outstanding principal balance of the Notes, until the same shall have been paid in full, *pro rata* to the Purchasers based on their Pro Rata Shares of the Notes.

(e) In connection with any prepayment made by the Issuer pursuant to clause (a) or (b) of this Section, the Issuer shall pay the applicable Prepayment Premium with respect to the principal amount so prepaid. In connection with any prepayment made by the Issuer pursuant to clause (a), (b) or (c) of this Section, the Issuer shall pay any amounts due under Section 2.16 with respect to the principal amount so prepaid.

Section 2.10 Interest on Notes.

(a) The Issuer shall pay interest on (i) each Base Rate Note at the Base Rate plus the Applicable Margin in effect from time to time (the "Base Rate Interest Rate") and (ii) each Eurodollar Note at the LIBOR Rate for the applicable Interest Period in effect for such Note plus the Applicable Margin in effect from time to time (the "Eurodollar Interest Rate). The Issuer shall, by notice (a "Cash/PIK Election Notice") delivered to each of the Purchasers and the Collateral Agent not less than three (3) Business Days prior to the first day of each month, elect whether interest payments for such month shall be paid in immediately available funds (the "Cash Option"), paid in kind and capitalized (the "PIK Option") or paid partially in immediately available funds and paid partially in kind and capitalized (the "Cash/PIK Option"); provided that (x) if any Permitted Refinancing Indebtedness requires or permits the payment of interest in immediately available funds, the Issuer shall be deemed to have selected the Cash Option with respect to the month in which such Permitted Refinancing Indebtedness is incurred and each month thereafter and (y) if the Issuer fails to deliver a Cash/PIK Election Notice at least three Business Days prior to the first day of a month, the Issuer shall be deemed to have elected the Cash Option for such month. If the Issuer elects (or is deemed to have elected) the Cash Option with respect to a month, all interest payments with respect to such month shall be paid in immediately available funds on the applicable interest payment date set forth in Section 2.10(c). If the Issuer elects the PIK option with respect to a month, all interest payments with respect to such month shall be paid in kind and capitalized on the applicable interest payment date set forth in Section 2.10(c) by adding such amount to the outstanding principal amount of such Base Rate Note or Eurodollar Note, as applicable. If the Issuer elects the Cash/PIK Option for a month, (A) in the case of a Base Rate Note, the Issuer shall pay interest on such Base Rate Note at (X) one-half the Base Rate plus 4.17% *per annum* in immediately available funds on the applicable interest payment date set forth in Section 2.10(c) and (Y) one-half the Base Rate plus 5.08% *per annum* paid in kind and capitalized on the applicable interest payment date set forth in Section 2.10(c) by adding such amount to the outstanding principal amount of such Base Rate Note and (B) in the case of a Eurodollar Note, the Issuer shall pay interest on such Eurodollar Note at (X) one-half the LIBOR Rate plus 4.625% *per annum* in immediately available funds on the applicable interest payment date set forth in Section 2.10(c) and (Y) one-half the LIBOR Rate plus 5.625% *per annum* paid in kind and capitalized on the applicable interest payment date set forth in Section 2.10(c) by adding such amount to the outstanding principal amount of such Eurodollar Note. With respect to the Cash/PIK Option, if the Applicable Margin is increased by an Increased Yield Amount, 45.12% of such Increased Yield Amount shall be paid in immediately available funds and 54.88% of such Increased Yield Amount shall be paid in kind and capitalized by adding such amount to the outstanding principal amount of the applicable Notes. Any capitalized amounts shall thereafter bear interest in accordance with this Section.

(b) Notwithstanding clause (a) of this Section, at the written request of the Required Purchasers if a Triggering Event of Default has occurred and is continuing, and automatically after acceleration of the Obligations or in connection with any Event of Default of the type described in Section 8.1(g) or 8.1(h), the Issuer shall pay interest ("Default Interest") (i) with respect to all Eurodollar Notes, at a rate *per annum* equal to 200 basis points above the otherwise applicable Eurodollar Interest Rate until the last day of such Interest Period, and thereafter, at a rate *per annum* equal to 200 basis points above the otherwise applicable Base Rate Interest Rate and (ii) with respect to all Base Rate Notes, at a rate *per annum* equal to 200 basis points above the otherwise applicable Base Rate Interest Rate, in each case, until such Triggering Event of Default has been waived in writing or the Required Purchasers have revoked the imposition of Default Interest (whichever occurs first).

(c) Interest on the outstanding principal amount of all Notes shall accrue from and including the date such Notes are issued and sold (or, in the case of the Delayed Draw Notes, the Delayed Draw Date) to but excluding the date of any repayment thereof. Interest on all outstanding Notes shall be payable monthly in arrears on the last day of each month, commencing on the last day of the first full month following the Closing Date, and on the Maturity Date. Interest on any Eurodollar Note which is converted into a Note of another Type or which is repaid or prepaid shall be payable on the date of such conversion or on the date of any such repayment or prepayment (on the amount repaid or prepaid) thereof. All Default Interest shall be payable in immediately available funds on demand.

(d) The Required Purchasers shall determine each interest rate applicable to the Notes hereunder and shall promptly notify the Issuer and the Purchasers of such rate in writing (or by telephone, promptly confirmed in writing). Any such determination shall be conclusive and binding for all purposes, absent manifest error.

Section 2.11 Fees.

(a) The Issuer shall pay to the Collateral Agent for its own account fees in the amounts and at the times previously agreed upon in writing by the Issuer and the Collateral Agent.

(b) The Issuer shall pay on the Closing Date to the parties specified therein all amounts in the Ares Closing Payment Letter that are due and payable on the Closing Date.

Section 2.12 Computation of Interest and Fees. Interest hereunder on Base Rate Notes shall be computed on the basis of a year of 365 days (or 366 days in a leap year) and paid for the actual number of days elapsed (including the first day but excluding the last day). All other interest and all fees hereunder shall be computed on the basis of a year of 360 days and paid for the actual number of days elapsed (including the first day but excluding the last day). Each determination by the Required Purchasers of an interest rate or fee hereunder shall be made in good faith and, except for manifest error, shall be final, conclusive and binding for all purposes. The Required Purchasers shall, at the request of the Issuer, deliver to the Issuer a statement showing the quotations used by the Required Purchasers in determining any interest rate hereunder.

Section 2.13 Inability to Determine Interest Rates. If, prior to the commencement of any Interest Period for any Eurodollar Note:

(i) Any Purchaser shall have determined (which determination shall be conclusive and binding upon the Issuer) that, by reason of circumstances affecting the relevant interbank market, adequate means do not exist for ascertaining LIBOR for such Interest Period, or

(ii) the LIBOR Rate does not adequately and fairly reflect the cost to any Purchaser of purchasing or maintaining its Eurodollar Notes for such Interest Period,

such Purchaser shall give written notice (or telephonic notice, promptly confirmed in writing) to the Issuer and to each other Purchaser as soon as practicable thereafter. Until such Purchaser shall notify the Issuer and each other Purchaser that the circumstances giving rise to such notice no longer exist, (i) the obligations of such Purchaser to continue or convert outstanding Notes as or into Eurodollar Notes shall be suspended and (ii) all such affected Note shall be converted into Base Rate Notes on the last day of the then current Interest Period applicable thereto unless the Issuer prepays such Notes in accordance with this Agreement.

Section 2.14 Illegality. If any Change in Law shall make it unlawful or impossible for any Purchaser to purchase or maintain any Eurodollar Note and such Purchaser shall so notify the Issuer, until such Purchaser notifies the Issuer that the circumstances giving rise to such suspension no longer exist, the obligation of such Purchaser to continue or convert outstanding Notes as or into Eurodollar Notes shall be suspended. If the affected Eurodollar Note is then outstanding, such Note shall be converted to a Base Rate Note either (i) on the last day of the then current Interest Period applicable to such Eurodollar Note if such Purchaser may lawfully continue to maintain such Note to such date or (ii) immediately if such Purchaser shall determine that it may not lawfully continue to maintain such Eurodollar Note to such date. Notwithstanding the foregoing, the affected Purchaser shall, prior to giving such notice to the Issuer, designate a different Applicable Funding Office if such designation would avoid the need for giving such notice and if such designation would not otherwise be disadvantageous to such Purchaser in the good faith exercise of its discretion.

Section 2.15 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement that is not otherwise included in the determination of the LIBOR Rate hereunder against assets of, deposits with or for the account of, or credit extended by, any Purchaser (except any such reserve requirement reflected in the LIBOR Rate); or

(ii) impose on any Purchaser or the eurodollar interbank market any other condition affecting this Agreement or any Eurodollar Notes made by such Purchaser;

and the result of any of the foregoing is to increase the cost to such Purchaser of making, converting into, continuing or maintaining a Eurodollar Note or to reduce the amount received or receivable by such Purchaser hereunder (whether of principal, interest or any other amount),

then, from time to time, such Purchaser may provide the Issuer with written notice and demand with respect to such increased costs or reduced amounts, and within five (5) Business Days after receipt of such notice and demand the Issuer shall pay to such Purchaser such additional amounts as will compensate such Purchaser for any such increased costs incurred or reduction suffered.

(b) If any Purchaser shall have determined that on or after the date of this Agreement any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Purchaser's capital (or on the capital of the Parent Company of such Purchaser) as a consequence of its obligations hereunder to a level below that which such Purchaser or such Parent Company could have achieved but for such Change in Law (taking into consideration such Purchaser's policies or the policies of such Parent Company with respect to capital adequacy and liquidity), then, from time to time, such Purchaser may provide the Issuer with written notice and demand with respect to such reduced amounts, and within five (5) Business Days after receipt of such notice and demand the Issuer shall pay to such Purchaser such additional amounts as will compensate such Purchaser or such Parent Company for any such reduction suffered.

(c) A certificate of such Purchaser setting forth the amount or amounts necessary to compensate such Purchaser or the Parent Company of such Purchaser specified in clause (a) or (b) of this Section shall be delivered to the Issuer and shall be conclusive, absent manifest error.

(d) Failure or delay on the part of any Purchaser to demand compensation pursuant to this Section shall not constitute a waiver of such Purchaser's right to demand such compensation; provided that the Issuer shall not be required to compensate any Purchaser pursuant to this Section for any increased costs incurred or reductions suffered more than one hundred eighty (180) days prior to the date that such Purchaser notifies the Issuer of the Change in Law giving rise to such increased costs or reductions, and of such Purchaser's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the one hundred eighty (180) day period referred to above shall be extended to include the period of retroactive effect thereof).

Section 2.16 Funding Indemnity. In the event of (a) the payment of any principal of a Eurodollar Note other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion or continuation of a Eurodollar Note other than on the last day of the Interest Period applicable thereto, or (c) the failure by the Issuer to borrow, prepay, convert or continue any Eurodollar Note on the date specified in any applicable notice (regardless of whether such notice is withdrawn or revoked), then, in any such event, the Issuer shall compensate each Purchaser, within five (5) Business Days after written demand from such Purchaser, for any loss, cost or expense attributable to such event. In the case of a Eurodollar Note, such loss, cost or expense shall be deemed to include an amount determined by such Purchaser to be the excess, if any, of (A) the amount of interest that would have accrued on the principal amount of such Eurodollar Note if such event had not occurred at the LIBOR Rate applicable to such Eurodollar Note for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to convert or continue, for the period that would have been the Interest Period for such Eurodollar Note) over (B) the amount of interest that would accrue on the principal amount of such Eurodollar Note for the same period if the LIBOR Rate were set on the date such Eurodollar Note was prepaid or converted or the date on which the Issuer failed to convert or continue such Eurodollar Note. A certificate as to any additional amount payable under this Section submitted to the Issuer by any Purchaser shall be conclusive, absent manifest error.

Section 2.17 Taxes.

(a) Any and all payments by or on account of any obligation of the Issuer or any other Note Party hereunder or under any other Note Document shall be made free and clear of and without deduction or withholding for any Indemnified Taxes; provided that if any applicable law requires the deduction or withholding of any Tax from any such payment, then the applicable Withholding Agent shall make such deduction and timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Issuer or other Note Party, as applicable, shall be increased as necessary so that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient shall receive an amount equal to the sum it would have received had no such deductions or withholdings been made.

(b) In addition, without limiting the provisions of clause (a) of this Section, the Issuer shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) The Issuer shall indemnify each Recipient (and, with respect to U.S. federal withholding taxes, if such Recipient is not the Beneficial Owner, the Beneficial Owner), within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes paid by such Recipient (or Beneficial Owner) on or with respect to any payment by or on account of any obligation of the Issuer or any other Note Party hereunder or under any other Note Document (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Issuer by the applicable Recipient (for its own account or on behalf of one or more Beneficial Owners) shall be conclusive, absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Issuer or any other Note Party to a Governmental Authority, the Issuer or other Note Party, as applicable, shall deliver to the Purchasers an 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 Required Purchasers.

(e) If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund, or a credit in lieu of a refund, of any Taxes or Other Taxes as to which it has been indemnified by the Issuer or with respect to which the Issuer has paid additional amounts pursuant to this Section 2.17, it shall pay to the Issuer an amount equal to such refund or credit (but only to the extent of indemnity payments made, or additional amounts paid, by the Issuer under this Section 2.17 with respect to the Taxes or Other Taxes giving rise to such refund) net of all out-of-pocket expenses of such Recipient and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the Issuer, upon the request of such Recipient, agrees to repay the amount paid over to the Issuer (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such Recipient in the event such Recipient is required to repay such refund to such Governmental Authority. This Section 2.17(e) shall not be construed to require a Recipient to make available its tax returns (or any other information relating to its taxes) to the Issuer or any other Person.

(f) Tax Forms.

(i) Any Purchaser that is a U.S. Person shall deliver to the Issuer and the Collateral Agent, on or prior to the date on which such Purchaser becomes a Purchaser under this Agreement (and from time to time thereafter upon the reasonable request of the Issuer), duly executed originals of IRS Form W-9 certifying, to the extent such Purchaser is legally entitled to do so, that such Purchaser is exempt from U.S. federal backup withholding tax.

(ii) Any Purchaser that is a Foreign Person and that is entitled to an exemption from or reduction of withholding tax under the Code or any treaty to which the United States is a party with respect to payments under this Agreement shall deliver to the Issuer and the Collateral Agent, at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law or reasonably requested by the Issuer 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 Purchaser that is a Foreign Person shall, to the extent it is legally entitled to do so, (w) on or prior to the date such Purchaser becomes a Purchaser under this Agreement, (x) on or prior to the date on which any such form or certification expires or becomes obsolete, (y) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause, and (z) from time to time upon the reasonable request by the Issuer, deliver to the Issuer and the Collateral Agent (in such number of copies as shall be requested by the Issuer), whichever of the following is applicable:

(A) if such Purchaser is claiming eligibility for benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Note Document, duly executed originals of IRS Form W-8BEN, or IRS Form W-8BEN-E or any successor form thereto, establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "interest" article of such tax treaty, and (y) with respect to any other applicable payments under any Note Document, duly executed originals of IRS Form W-8BEN, or IRS Form W-8BEN-E, or any successor form thereto, establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "business profits" or "other income" article of such tax treaty;

(B) duly executed originals of IRS Form W-8ECI, or any successor form thereto, certifying that the payments received by such Purchaser are effectively connected with such Purchaser's conduct of a trade or business in the United States;

(C) if such Purchaser is claiming the benefits of the exemption for portfolio interest under Section 871(h) or Section 881(c) of the Code, duly executed originals of IRS Form W-8BEN, IRS Form W-8-BEN-E, or any successor form thereto, together with a certificate (a "U.S. Tax Compliance Certificate") upon which such Purchaser certifies that (1) such Purchaser is not a bank for purposes of Section 881(c)(3)(A) of the Code, or the obligation of the Issuer hereunder is not, with respect to such Purchaser, a loan agreement entered into in the ordinary course of its trade or business, within the meaning of that Section, (2) such Purchaser is not a 10% shareholder of the Issuer within the meaning of Section 871(h)(3) or Section 881(c)(3)(B) of the Code, (3) such Purchaser is not a controlled foreign corporation that is related to the Issuer within the meaning of Section 881(c)(3)(C) of the Code, and (4) the interest payments in question are not effectively connected with a U.S. trade or business conducted by such Purchaser; or

(D) if such Purchaser is not the Beneficial Owner (for example, a partnership or a participating Purchaser granting a typical participation), duly executed originals of IRS Form W-8IMY, or any successor form thereto, accompanied by IRS Form W-9, IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate, and/or other certification documents from each Beneficial Owner, as applicable.

(iii) Each Purchaser that is a Foreign Person shall, to the extent it is legally entitled to do so, deliver to the Issuer and the Collateral Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Purchaser becomes a Purchaser under this Agreement (and from time to time thereafter upon the reasonable request of the Issuer), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Issuer to determine the withholding or deduction required to be made.

(iv) If a payment made to a Purchaser under any Note Document would be subject to U.S. federal withholding tax imposed by FATCA if such Purchaser were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Purchaser shall deliver to the Issuer and the Collateral Agent at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with its obligations under FATCA and to determine that such Purchaser has complied with such Purchaser's obligations under FATCA or to determine the amount to deduct and withhold from such payment; provided that, solely for purposes of this clause (E), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(v) Each Purchaser agrees that if any form or certification it previously delivered under this Section expires or becomes obsolete or inaccurate in any respect, such Purchaser shall update such form or certification; however, if such Purchaser is not legally entitled to provide an updated form or certification, it shall promptly notify the Issuer and the Collateral Agent of its inability to update such form or certification.

Section 2.18 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) The Issuer shall make each payment required to be made by it hereunder (whether of principal, Prepayment Premium, premium, interest or fees, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to 2:00 p.m. on the date when due, in immediately available funds (except as otherwise expressly set forth herein), free and clear of any defenses, rights of set-off, counterclaim, or withholding or deduction of taxes. Any amounts received after such time on any date may, in the discretion of the applicable Person entitled thereto, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments owing to any Purchaser shall be made to such Purchaser on a pro rata basis, and all such payments owing to the Collateral Agent shall be made to the Collateral Agent, in each case, to such accounts as may be specified by the applicable Person not less than five (5) days before the applicable payment is due (provided that, if a Purchaser or the Collateral Agent shall not have provided any such notice, such payment shall be made to the account most recently identified by such Purchaser or the Collateral Agent), except that payments pursuant to Sections 2.15, 2.16, 2.17 and 10.3 shall be made directly to the Persons entitled thereto. If any payment hereunder shall be due on a day that is not a Business Day, 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 made payable for the period of such extension. All payments hereunder shall be made in Dollars.

(b) If at any time insufficient funds are received by and available to the Purchasers and the Collateral Agent to pay fully all amounts of principal, interest, Prepayment Premiums, premiums and fees then due hereunder, such funds shall be applied as follows: first, to all amounts owed to the Collateral Agent then due and payable pursuant to any of the Note Documents; second, to all reimbursable expenses of the Purchasers then due and payable pursuant to any of the Note Documents, pro rata to the Purchasers based on their respective pro rata shares of such fees and expenses; third, to all accrued interest, Prepayment Premiums, premiums and fees then due and payable hereunder, pro rata to the Purchasers based on their respective pro rata shares of such interest, Prepayment Premiums, premiums and fees; and fourth, to all principal of the Notes then due and payable hereunder, pro rata to the parties entitled thereto based on their respective pro rata shares of such principal.

(c) If any Purchaser shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Notes that would result in such Purchaser receiving payment of a greater proportion of the aggregate amount of its Notes, Prepayment Premium, premium and accrued interest and fees thereon than the proportion received by any other Purchaser with respect to its Notes, then the Purchaser receiving such greater proportion shall purchase (for cash at face value) participations in the Notes of other Purchasers to the extent necessary so that the benefit of all such payments shall be shared by the Purchasers ratably in accordance with the aggregate amount of principal of, Prepayment Premiums, premiums, and accrued interest on their respective Notes; 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 clause shall not be construed to apply to any payment made by the Issuer pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Purchaser) or any payment obtained by a Purchaser as consideration for the assignment of or sale of a participation in any of its Notes to any assignee or participant, other than to the Issuer or any Subsidiary or Affiliate thereof (as to which the provisions of this clause shall apply). The Issuer consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Purchaser acquiring a participation pursuant to the foregoing arrangements may exercise against the Issuer rights of set-off and counterclaim with respect to such participation as fully as if such Purchaser were a direct creditor of the Issuer in the amount of such participation.

Section 2.19 Mitigation of Obligations. If any Purchaser requests compensation under Section 2.15, or if the Issuer is required to pay any additional amount to any Purchaser or any Governmental Authority for the account of any Purchaser pursuant to Section 2.17, then such Purchaser shall use reasonable efforts to designate a different funding office for purchasing or booking its Notes hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Purchaser, such designation or assignment (i) would eliminate or reduce amounts payable under Section 2.15 or Section 2.17, as the case may be, in the future and (ii) would not subject such Purchaser to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Purchaser. The Issuer hereby agrees to pay all reasonable and documented (in summary form) costs and expenses incurred by any Purchaser in connection with such designation or assignment.

Section 2.20 Replacement of Purchasers. If (a) any Purchaser requests compensation under Section 2.15, or if the Issuer is required to pay any additional amount to any Purchaser or any Governmental Authority for the account of any Purchaser pursuant to Section 2.17, (b) any Purchaser is a Defaulting Purchaser, or (c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 10.2(b), the consent of Required Purchasers shall have been obtained but the consent of one or more of such other Purchasers (each a "Non-Consenting Purchaser") whose consent is required shall not have been obtained, then the Issuer may, at its sole expense and effort, upon notice to such Purchaser, require such Purchaser to assign and delegate, without recourse (in accordance with and subject to the restrictions set forth in Section 10.4(b)), all of its interests, rights (other than its existing rights to payments pursuant to Section 2.15 or 2.17, as applicable) and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Purchaser) (a "Replacement Purchaser"); provided that (i) such Purchaser shall have received payment of an amount equal to the outstanding principal amount of all Notes owed to it, accrued interest thereon, accrued fees, the Prepayment Premium (other than in the case of a Non-Consenting Purchaser) with respect to the aggregate principal amount of the Notes being assigned (calculating such Prepayment Premium as if such Notes had been prepaid on the date of such assignment) and all other amounts payable to it hereunder from the assignee (in the case of such outstanding principal and accrued interest) and from the Issuer (in the case of all other amounts), (ii) in the case of a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments, (iii) such assignment does not conflict with applicable law, and (iv) in the case of a Non-Consenting Purchaser, each Replacement Purchaser shall consent, at the time of such assignment, to each matter in respect of which such terminated Purchaser was a Non-Consenting Purchaser. A Purchaser shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Purchaser or otherwise, the circumstances entitling the Issuer to require such assignment and delegation cease to apply.

Section 2.21 Defaulting Purchasers.

(a) Defaulting Purchaser Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Purchaser becomes a Defaulting Purchaser, then, until such time as such Purchaser is no longer a Defaulting Purchaser, to the extent permitted by applicable law:

(i) Such Defaulting Purchaser's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Purchasers and in Section 10.2.

(ii) Any payment of principal, interest, Prepayment Premiums, premiums, fees or other amounts received by such Defaulting Purchaser (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) shall be held in trust by such Defaulting Purchaser and applied as follows: first, to the payment of any amounts owing by such Defaulting Purchaser to the Collateral Agent hereunder; second, as the Issuer may request (so long as no Event of Default exists), to the funding of any Delayed Draw Advance in respect of which such Defaulting Purchaser has failed to fund its portion thereof as required by this Agreement; third, if so determined by the Issuer, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Purchaser's potential future funding obligations with respect to Delayed Draw Advances under this Agreement; fourth, to the payment of any amounts owing to the Purchasers as a result of any judgment of a court of competent jurisdiction obtained by any Purchaser against such Defaulting Purchaser as a result of such Defaulting Purchaser's breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Issuer as a result of any judgment of a court of competent jurisdiction obtained by the Issuer against such Defaulting Purchaser as a result of such Defaulting Purchaser's breach of its obligations under this Agreement; and sixth, to such Defaulting Purchaser or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Notes in respect of which such Defaulting Purchaser has not fully funded its appropriate share, and (y) such Notes were issued and purchased at a time when the conditions set forth in Section 3.1 were satisfied or waived, such payment shall be applied solely to pay the Notes held by all Non-Defaulting Purchasers on a pro rata basis prior to being applied to the payment of any Notes held by such Defaulting Purchaser until such time as all Notes are held by the Purchasers pro rata in accordance with the Commitments and the Delayed Draw Commitments. Any payments, prepayments or other amounts paid or payable to a Defaulting Purchaser that are applied (or held) to pay amounts owed by a Defaulting Purchaser pursuant to this Section 2.21(a)(ii) shall be deemed paid to and redirected by such Defaulting Purchaser, and each Purchaser irrevocably consents hereto.

(b) Defaulting Purchaser Cure. If the Required Purchasers and the Issuer agree in writing that a Purchaser is no longer a Defaulting Purchaser, the Issuer will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Purchaser will, to the extent applicable, purchase at par that portion of outstanding Notes of the other Purchasers or take such other actions as the Required Purchasers may determine to be necessary to cause the Notes to be held pro rata by the Purchasers in accordance with the applicable Commitments and Delayed Draw Commitments, whereupon such Purchaser will cease to be a Defaulting Purchaser; provided that no adjustments will be made retroactively with respect to payments made by or on behalf of the Issuer while that Purchaser was a Defaulting Purchaser; and provided, further, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Purchaser to Purchaser will constitute a waiver or release of any claim of any party hereunder arising from that Purchaser's having been a Defaulting Purchaser.

Section 2.22 **Legend.** Each Note shall bear the following legend:

THIS NOTE WAS ISSUED IN A PRIVATE PLACEMENT, WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT") OR THE SECURITIES LAWS OF ANY STATE, AND MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS COVERING THE TRANSFER OR PURSUANT TO AN APPLICABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF SUCH ACT AND SUCH LAWS.

Section 2.23 Transfer and Exchange of Notes. Upon surrender of any Note to the Issuer at the address and to the attention of the designated officer, for registration of transfer or exchange (and in the case of a surrender for registration of transfer accompanied by a written instrument of transfer duly executed by the registered Purchaser or such Purchaser's attorney duly authorized in writing and accompanied by the relevant name, address and other information for notices of each transferee of such Note or part thereof) pursuant to Section 10.4(b), within ten (10) Business Days thereafter, the Issuer shall execute and deliver, at the Issuer's expense (except as provided below), one or more new Notes (as requested by the Purchaser) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Subject to Section 10.4, in the case of any assignment of a Note, each such new Note shall be payable to such Person as such Purchaser may request and shall be substantially in the form of Exhibit B or Exhibit C, as applicable. Each such new Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. The Issuer may require payment of a sum sufficient to cover any stamp tax or governmental charge imposed in respect of any such transfer of Notes. Each transferee, by its acceptance of a Note registered in its name (or the name of its nominee) will be deemed to have made the representations set forth in Section 2.25.

Section 2.24 Replacement of Notes. Upon receipt by the Issuer at the address and to the attention of the designated officer of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note, and

(a) in the case of loss, theft or destruction, an indemnity reasonably satisfactory to it (provided, that, if the Purchaser is, or is a nominee for, an original purchaser or another Purchaser with a minimum net worth of at least $100,000,000 or a "qualified institutional buyer" as defined in Rule 144A(a)(1) under the Securities Act, such Person's own unsecured agreement of indemnity shall be deemed to be satisfactory), or

(b) in the case of mutilation, upon surrender and cancellation thereof,

within ten (10) Business Days thereafter, the Issuer at its own expense shall execute and deliver, in lieu thereof, a new Note in an aggregate principal amount equal to the unpaid principal amount of the Note to be replaced, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

Section 2.25 Representations of Purchasers. Each Purchaser, severally and not jointly, hereby represents and warrants to the Issuer that, as of the Closing Date and immediately following the closing of the transactions contemplated under this Agreement, the following are true and correct: (a) such Purchaser is not acquiring the Notes to be purchased by it hereunder with a view to or for sale or resale in connection with any distribution thereof within the meaning of the Securities Act, (b) such Purchaser (i) is an "accredited investor" as defined in Rule 501 promulgated under the Securities Exchange Act of 1934 as in effect as of the Closing Date, and (ii) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment in the Notes being purchased by it and (c) such Purchaser understands that the Notes have not been registered under the Securities Act and may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that the Issuer is not required to register the Notes. The purchase of the Notes by each Purchaser on the Closing Date shall constitute its confirmation of the foregoing representations and warranties. Each Purchaser understands that such Notes are being sold to it in a transaction which is exempt from the registration requirements of the Securities Act, and that, in making the representations and warranties contained in Section 4.25, the Issuer is relying, to the extent applicable, upon the representations and warranties made by the Purchasers herein.

Section 2.26 **Prepayment Premium.** Payment of any Prepayment Premium hereunder constitutes liquidated damages and not a penalty, and the actual amount of damages to the Purchasers or profits lost by the Purchasers as a result of the relevant prepayment or repayment would be impracticable and extremely difficult to ascertain. Accordingly, the Prepayment Premium hereunder is provided by mutual agreement of the Issuer and the Purchasers as a reasonable estimation and calculation of such actual lost profits and other actual damages of the Purchasers. Without limiting the generality of the foregoing, it is understood and agreed that upon the occurrence of any optional prepayment of the Notes pursuant to Section 2.8(a), any mandatory prepayment of the Notes pursuant to Section 2.9(a) or (b) or repayment of the Notes following acceleration pursuant to Section 8.1 (including an automatic acceleration under clause (g) or (h) of Section 8.1, or to the extent the Notes otherwise become due and payable prior to their maturity as provided in Section 8.1), except as expressly set forth in the definition of "Prepayment Premium," the Prepayment Premium (if any) shall be due and payable as though any prepaid or repaid Notes were voluntarily prepaid as of such date and shall constitute part of the Obligations secured by the Collateral. The Prepayment Premium shall also be payable in the event the Notes are satisfied or released by foreclosure (whether by power of judicial proceeding or otherwise), deed in lieu of foreclosure or by any other means. THE ISSUER HEREBY EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR OTHER LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING PREPAYMENT PREMIUM IN CONNECTION WITH ANY SUCH EVENT. The Issuer expressly agrees (to the fullest extent it may lawfully do so) that with respect to the Prepayment Premium payable under the terms of this Agreement: (i) the Prepayment Premium is reasonable and is the product of an arm's length transaction between sophisticated business parties, ably represented by counsel; (ii) the Prepayment Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (iii) there has been a course of conduct between the Purchasers and the Note Parties giving specific consideration in this transaction for such agreement to pay the Prepayment Premium; and (iv) the Note Parties shall be estopped hereafter from claiming differently than as agreed to in this paragraph. The Issuer expressly acknowledges that its agreement to pay the Prepayment Premium as herein described is a material inducement to the Purchasers to provide the Commitments and the Delayed Draw Commitments and purchase the Notes.

ARTICLE III

CONDITIONS PRECEDENT TO PURCHASE OF NOTES

Section 3.1 **Conditions to Effectiveness.** The obligations of the Purchasers to purchase the Notes shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 10.2):

(a) The Collateral Agent and the Purchasers shall have received payment of all fees, expenses and other amounts due and payable on or prior to the Closing Date, to the extent invoiced in reasonable detail at least one (1) Business Day prior to the Closing Date, including, without limitation, reimbursement or payment of all reasonable and documented (in summary form) costs and expenses of the Collateral Agent (including, but not limited to, attorneys' fees and costs), the Purchasers and their Affiliates, in each case, required to be reimbursed or paid by the Issuer hereunder, under any other Note Document, the Fee Letters, the Commitment Letter and any other agreement with the Collateral Agent or the any Purchaser.

(b) The Collateral Agent and the Purchasers (or their respective counsels) shall have received the following, each to be in form and substance reasonably satisfactory to the Collateral Agent and the Purchasers:

(i) a counterpart of this Agreement signed by or on behalf of each party hereto;

(ii) a certificate of the Secretary or Assistant Secretary (or other comparable Responsible Officer) of each Note Party in substantially the form of Exhibit 3.1(b)(ii), attaching and certifying copies of its bylaws, or partnership agreement or limited liability company agreement, and of the resolutions of its Governing Body, or comparable organizational documents and authorizations, authorizing the execution, delivery and performance of the Note Documents to which it is a party and certifying the name, title and true signature of each officer of such Note Party executing the Note Documents to which it is a party;

(iii) certified copies of the articles or certificate of incorporation, certificate of organization or limited partnership, or other registered organizational documents of each Note Party, together with certificates of good standing or existence, as may be available from the Secretary of State of (A) the jurisdiction of organization of such Note Party and (B) each other jurisdiction where such Note Party is required to be qualified to do business as a foreign corporation where the failure to be so qualified would reasonably be expected to have a Material Adverse Effect;

(iv) a written opinion of Dechert LLP, counsel to the Note Parties, and, if reasonably requested by the Required Purchasers, customary local counsel opinions with respect to certain Note Parties each addressed to the Collateral Agent and each of the Purchasers, and covering such matters relating to the Note Parties, the Note Documents and the transactions contemplated therein as the Collateral Agent or the Required Purchasers shall reasonably request;

(v) a certificate in substantially the form of Exhibit 3.1(b)(v), dated the Closing Date and signed by a Responsible Officer, certifying that after giving effect to the purchase of the Notes, (x) since December 31, 2016, no event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singularly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences whether or not related, that has resulted in a Material Adverse Effect has occurred, (y) at the time of and immediately after giving effect to the purchase and sale of the Notes hereunder, the representations and warranties set forth in this Agreement and the other Note Documents shall be true and correct in all material respects (other than those representations and warranties (i) that are expressly qualified by a Material Adverse Effect or other materiality, in which case such representations and warranties shall be true and correct in all respects or (ii) that expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date), and (z) at the time of and immediately after giving effect to the purchase and sale of the Notes hereunder, no Default or Event of Default shall exist;

(vi) a report setting forth the sources and uses of the proceeds of the Notes;

(vii) the ABDC Intercreditor Agreement, duly executed and delivered by the parties thereto;

(viii) certified copies of all material consents, approvals, authorizations, registrations, filings and orders required to be made or obtained under any Requirement of Law, or by any material Contractual Obligation of any Note Party, in connection with the execution, delivery, performance, validity and enforceability of the Note Documents or any of the transactions contemplated thereby, if any, and such consents, approvals, authorizations, registrations, filings and orders shall be in full force and effect and all applicable waiting periods shall have expired,;

(ix) copies of (A) the financial statements described in Section 4.4(a) and (B) the Issuer and its Subsidiaries' statement of profit and loss for May 2017;

(x) the Guaranty and Security Agreement, duly executed by the Issuer and each of its Domestic Subsidiaries (but excluding any Specified Strategic Joint Venture (in each case, if formed prior to the Closing Date)), together with (A) UCC financing statements and other applicable documents under the laws of all necessary or appropriate jurisdictions with respect to the perfection of the Liens granted under the Guaranty and Security Agreement, as reasonably requested by the Collateral Agent, acting at the direction of the Required Purchasers, or the Required Purchasers in order to perfect such Liens, duly authorized by the Note Parties, (B) copies of favorable UCC, tax, judgment and fixture lien search reports in all necessary or appropriate jurisdictions and under all legal and trade names of the Note Parties, as reasonably requested by the Collateral Agent, acting at the direction of the Required Purchasers, or the Required Purchasers, indicating that there are no prior Liens on any of the Collateral other than Specified Permitted Liens and Liens to be released on the Closing Date, (C) an Information and Collateral Disclosure Certificate, duly completed and executed by the Note Parties, (D) as necessary, duly executed Patent Security Agreements, Trademark Security Agreements and Copyright Security Agreements, and (E) original certificates evidencing all issued and outstanding shares of Capital Stock of all Subsidiaries owned directly by any Note Party (or, in the case of any Foreign Subsidiary directly owned by a Note Party, not more than 65% of the issued and outstanding voting Capital Stock of such Foreign Subsidiary), in each case, to the extent certificated prior to the Closing Date, and related stock or membership interest powers or other appropriate instruments of transfer executed in blank;

(xi) a summary, which may include a flow chart and summary of the Note Parties' and their Subsidiaries' cash management system, setting forth in reasonable detail the principal bank accounts of the Note Parties and their Subsidiaries where any cash balances and proceeds of receivables are collected, aggregated and/or maintained in the ordinary course of business, other than Excluded Accounts;

(xii) subject to Section 5.16 and the Issuer's use of commercially reasonable efforts, with respect to the chief executive office of the Issuer and each additional leased property where books or records are stored or located, a copy of the underlying lease, as applicable, and a Collateral Access Agreement from the landlord of such leased property; provided that if such Note Party is unable to deliver any such Collateral Access Agreement after using its commercially reasonable efforts to do so, the Required Purchasers shall waive the foregoing requirement in their reasonable discretion;

(xiii) copies of duly executed payoff letters with respect to any existing Indebtedness in respect of the Existing Credit Agreement and the other Loan Documents (as defined in the Existing Credit Agreement) and the Existing Priming Credit Agreement and the other Loan Documents (as defined in the Existing Priming Credit Agreement), together with (A) UCC-3 or other appropriate termination statements releasing all liens of the existing lenders upon any of the personal property of the Issuer and its Subsidiaries and authorizations to file such UCC-3s, (B) cancellations and releases releasing all liens of the existing lenders upon any real property owned by the Issuer and its Subsidiaries, and (C) any other releases, terminations or other documents reasonably required by the Required Purchasers to evidence the payoff of such Indebtedness;

(xiv) the First Lien/Second Lien Intercreditor Agreement, duly executed and delivered by the parties thereto;

(xv) (A) certificates of insurance describing the types and amounts of insurance (property and liability) maintained by any of the Note Parties, in each case naming the Collateral Agent as loss payee or additional insured, as the case may be, and (B) subject to Section 5.16, a lender's loss payable endorsement (in the case of each of the foregoing clauses (A) and (B), other than with respect to any director and officer indemnification policies, workers' compensation policies and any policies that provide coverage for property that does not constitute Collateral);

(xvi) documentation and information required by regulatory authorities under applicable "know your customer" and anti-money laundering laws at least five (5) Business Days prior to the Closing Date to the extent that such documentation and information was requested by the Collateral Agent or any Purchaser at least ten (10) days prior to the Closing Date; and

(xvii) a certificate, dated the Closing Date and signed by a Responsible Officer of the Issuer on behalf of each Note Party, confirming that after giving effect to the execution and delivery of the Note Documents, the incurrence on the Closing Date of the Notes (and the use of proceeds thereof on the Closing Date), and the other transactions contemplated herein to occur on the Closing Date, the Issuer and its Subsidiaries on a consolidated basis are Solvent.

(c) The Note Parties shall have used commercially reasonable efforts to deliver Account Control Agreements and Government Receivables Account Agreements, duly executed by each Permitted Third Party Bank and the applicable Note Party to the Collateral Agent and the Purchasers; provided that, if such Account Control Agreements and Government Receivables Account Agreements are not delivered by the Closing Date, the applicable Note Party shall deliver such Account Control Agreements and Government Receivables Account Agreements within ninety (90) days following the Closing Date.

(d) There shall be no Indebtedness for borrowed money of the Issuer or any of its Subsidiaries to any Person, other than the Notes, the First Lien Notes, the Senior Notes and other Indebtedness reasonably satisfactory to the Purchasers.

(e) There shall not be any pending or threatened in writing litigation, investigation or other proceedings or inquiry (private or governmental) seeking to enjoin the transactions contemplated by this Agreement and the other Note Documents.

(f) The Issuer shall have received the cash proceeds of the purchase of the First Lien Notes.

(g) (i) The Issuer shall have complied in all material respects with and be in compliance in all material respects with all of the of terms and conditions of the Commitment Letter and the Ares Closing Payment Letter and (b) the representations and warranties of the Issuer set forth under the heading "Evaluation Material" in the Commitment Letter shall be true and correct in all material respects (other than those representations and warranties that are expressly qualified by materiality, in which case such representations and warranties shall be true and correct in all respects) as of the Closing Date.

(h) The Issuer shall have sold to each Purchaser (or its designee) Warrants (as defined in the Warrant Purchase Agreement, the "Warrants") to purchase the percentage of the Fully Diluted (as defined in the Warrant Purchase Agreement) Common Stock (as defined in the Warrant Purchase Agreement) set forth next to such Purchaser's (or its designee's) signature page to that certain Warrant Purchase Agreement, dated as of the Closing Date (the "Warrant Purchase Agreement"), among the Issuer and each Purchaser (or its designee), and shall have complied with all conditions, covenants and agreements in the Warrant Purchase Agreement.

Without limiting the generality of the provisions of this Section, for purposes of determining compliance with the conditions specified in this Section, each Purchaser that has signed this Agreement shall be deemed to have consented to, approved of, accepted or been satisfied with each document or other matter required thereunder to be consented to, approved by or acceptable or satisfactory to a Purchaser unless the Issuer shall have received notice from such Purchaser prior to the proposed Closing Date specifying its objection thereto.

Section 3.2 Conditions to Delayed Draw Advances. The obligation of each Purchaser to make a Delayed Draw Advance is subject to the satisfaction or waiver in writing pursuant to the terms of Section 10.2(b) of the following conditions:

(a) At the time of and immediately after giving effect to such Delayed Draw Advance, no Default or Event of Default shall exist;

(b) at the time of and immediately after giving effect to such Delayed Draw Advance, the representations and warranties of each Note Party set forth in the Note Documents shall be true and correct in all material respects (other than those representations and warranties (i) that are expressly qualified by a Material Adverse Effect or other materiality, in which case such representations and warranties shall be true and correct in all respects or (ii) that expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date); and

(c) the Issuer shall have delivered the required Delayed Draw Advance Request to the Purchasers not less than five (5) Business Days prior to the proposed date of the Delayed Draw Advance.

Section 3.3 Delivery of Documents. All of the Note Documents, certificates and other documents and papers referred to in this Article, unless otherwise specified, shall be delivered to each of the Purchasers and shall be in form and substance reasonably satisfactory in all respects to each of the Purchasers.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

The Issuer represents and warrants to the Collateral Agent and each Purchaser as follows:

Section 4.1 Existence; Power. The Issuer and each of its Subsidiaries (i) is duly organized, validly existing and in good standing as a corporation, partnership or limited liability company under the laws of the jurisdiction of its organization, (ii) has all requisite power and authority to carry on its business as now conducted, and (iii) is duly qualified to do business, and is in good standing, in each jurisdiction where such qualification is required, except where a failure to be so qualified would not reasonably be expected to result in a Material Adverse Effect.

Section 4.2 **Organizational Power; Authorization.** The execution, delivery and performance by each Note Party of the Note Documents to which it is a party are within such Note Party's organizational powers and have been duly authorized by all necessary organizational and, if required, shareholder, partner or member action. Each of this Agreement and the other Note Documents has been duly executed and delivered by the Issuer and the other Note Parties party thereto and constitutes valid and binding obligations of the Issuer or such Note Party (as the case may be), enforceable against it in accordance with their respective terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

Section 4.3 **Governmental Approvals; No Conflicts.** The execution, delivery and performance by each Note Party of the Note Documents to which it is a party (a) do not require any consent or approval of, registration or filing with, or any action by, any Governmental Authority or any Person with respect to which the Issuer or any of its Subsidiaries has any Contractual Obligation, except those as have been obtained or made and are in full force and effect and except for filings necessary to perfect or maintain perfection of the Liens created under the Note Documents, (b) will not violate any Requirement of Law applicable to the Issuer or any of its Subsidiaries or any judgment, order or ruling of any Governmental Authority, (c) will not violate or result in a default under any material Contractual Obligation of the Issuer or any of its Subsidiaries or any of its assets or give rise to a right thereunder to accelerate the obligations of the Issuer or any of its Subsidiaries thereunder (whether accomplished by a mandatory prepayment, a redemption, or otherwise) and (d) will not result in the creation or imposition of any Lien on any asset of the Issuer or any of its Subsidiaries, except Liens (if any) created under the Note Documents.

Section 4.4 **Financial Statements; Material Adverse Effect.**

(a) The Issuer has furnished to each Purchaser (i) the audited consolidated balance sheet of the Issuer and its Subsidiaries as of December 31, 2016, and the related audited consolidated statements of income, shareholders' equity and cash flows for the Fiscal Year then ended, prepared by Ernst & Young LLP and (ii) the unaudited consolidated balance sheet of the Issuer and its Subsidiaries as of March 31, 2017, and the related unaudited consolidated statements of income and cash flows for the Fiscal Quarter and year-to-date period then ended, certified by a Responsible Officer. Such financial statements fairly present in all material respects the consolidated financial condition of the Issuer and its Subsidiaries as of such dates and the consolidated results of operations for such periods in conformity with GAAP (as in effect at the time such financial statements were prepared and subject to Section 1.3) consistently applied (except as expressly noted therein), subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii). All Profit Plans delivered to the Purchasers after the Closing Date pursuant to Section 5.1(e) have been prepared by the Issuer in good faith based on assumptions believed by the Issuer to be reasonable at the time made; provided that it is expressly understood and agreed that financial projections (including all Profit Plans) are not to be viewed as facts, are inherently uncertain and are not a guarantee of financial performance and actual results may differ from financial projections and such differences may be material.

(b) Since December 31, 2016, there have been no changes with respect to, or event affecting, the Issuer and its Subsidiaries which have had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

Section 4.5 **Litigation and Environmental Matters**.

(a) No litigation, investigation or proceeding (including any whistleblower action) of or before any arbitrators or Governmental Authorities is pending against or, to the knowledge of the Issuer, threatened in writing against the Issuer or any of its Subsidiaries (i) that would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect or (ii) which in any manner draws into question the validity or enforceability of this Agreement or any other Note Document.

(b) Except as would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, neither the Issuer nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

Section 4.6 **Compliance with Laws and Agreements.** Except for non-compliance which would not reasonably be expected to result in a Material Adverse Effect, the Issuer and each of its Subsidiaries is in compliance with (a) all Requirements of Law and all judgments, decrees and orders of any Governmental Authority and (b) all Material Agreements.

Section 4.7 **Investment Company Act.** Neither the Issuer nor any of its Subsidiaries is (a) an "investment company" or is "controlled" by an "investment company", as such terms are defined in, or subject to regulation under, the Investment Company Act of 1940, as amended and in effect from time to time, or (b) otherwise subject to any other regulatory scheme limiting its ability to incur debt or requiring any approval or consent from, or registration or filing with, any Governmental Authority in connection therewith.

Section 4.8 **Taxes.** The Issuer and its Subsidiaries and each other Person for whose taxes the Issuer or any of its Subsidiaries could become liable have timely filed or caused to be filed all Federal income tax returns and all other material tax returns that are required to be filed by them, and have paid all taxes shown to be due and payable on such returns or on any assessments made against it or its property and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, except where the same are currently being contested in good faith by appropriate proceedings and for which the Issuer or such Subsidiary, as the case may be, has set aside on its books adequate reserves in accordance with GAAP. The charges, accruals and reserves on the books of the Issuer and its Subsidiaries in respect of such taxes are adequate, and no tax liabilities that could be materially in excess of the amount so provided are anticipated.

Section 4.9 **Margin Regulations.** None of the proceeds of any of the Notes will be used, directly or indirectly, for "purchasing" or "carrying" any "margin stock" within the respective meanings of each of such terms under Regulation U or for any purpose that violates the provisions of Regulation T, Regulation U or Regulation X. Neither the Issuer nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying "margin stock".

Section 4.10 **ERISA.** Each Plan is in substantial compliance in form and operation with its terms and with ERISA and the Code (including, without limitation, the Code provisions compliance with which is necessary for any intended favorable tax treatment) and all other applicable laws and regulations, except as would not reasonably be expected to have a Material Adverse Effect. Each Plan (and each related trust, if any) which is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that it meets the requirements of Sections 401(a) and 501(a) of the Code covering all applicable tax law changes, or is comprised of a master or prototype plan that has received a favorable opinion letter from the Internal Revenue Service, and nothing has occurred since the date of such determination that would adversely affect such determination (or, in the case of a Plan with no such determination, nothing has occurred that would adversely affect the issuance of a favorable determination letter or otherwise adversely affect such qualification), except as would not reasonably be expected to have a Material Adverse Effect. No ERISA Event has occurred that has had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. There exists no Unfunded Pension Liability with respect to any Plan and no Plan is in, or is expected to be, in at risk status under Title IV of ERISA such that a Material Adverse Effect would be expected in the foreseeable future to occur with respect thereto. There are no actions, suits or claims pending against or involving a Plan (other than routine claims for benefits) or, to the knowledge of the Issuer, any of its Subsidiaries or any ERISA Affiliate, threatened, which would reasonably be expected to be asserted successfully against any Plan and, if so asserted successfully, would reasonably be expected either singly or in the aggregate to have a Material Adverse Effect. The Issuer, each of its Subsidiaries and each ERISA Affiliate have made all contributions to or under each Plan and Multiemployer Plan required by law within the applicable time limits prescribed thereby, by the terms of such Plan or Multiemployer Plan, respectively, or by any contract or agreement requiring contributions to a Plan or Multiemployer Plan, except as would not reasonably be expected to have a Material Adverse Effect. Each Non-U.S. Plan has been maintained in compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities, except as would not reasonably be expected to result in liability to the Issuer or any of its Subsidiaries. All contributions required to be made with respect to a Non-U.S. Plan have been timely made. Neither the Issuer nor any of its Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Non-U.S. Plan. The present value of the accrued benefit liabilities (whether or not vested) under each Non-U.S. Plan, determined as of the end of the Issuer's most recently ended fiscal year on the basis of reasonable actuarial assumptions, did not exceed the current value of the assets of such Non-U.S. Plan allocable to such benefit liabilities.

Section 4.11 **Ownership of Property; Insurance**.

(a) As of the Closing Date, all interests in real property owned by the Issuer or any of its Subsidiaries (collectively, and together with any additional real estate acquired after the Closing Date, the "Real Estate") or leased by the Issuer or any of its Subsidiaries are listed on Schedule 4.11(a). Each of the Issuer and its Subsidiaries has good title to, or valid leasehold interests in, all Real Estate, leased real property and all other personal property material to the operation of its business (except as sold or otherwise disposed of in the ordinary course of business or in a transaction permitted hereunder), in each case free and clear of Liens (other than Liens not prohibited by Section 7.2). All leases that individually are material to the business or operations of the Issuer and its Subsidiaries are valid and are in full force. As of the Closing Date, all permits required to have been issued or appropriate to enable the Real Estate or any leased real property to be lawfully occupied and used for all of the purposes for which it is currently occupied and used have been lawfully issued and are in full force and effect, except where the failure to be so issued or in full force and effect would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The Intellectual Property Rights owned by the Issuer and its Subsidiaries, together with the Intellectual Property Rights licensed to the Issuer and its Subsidiaries under license agreements, constitute all of the Intellectual Property Rights material to their respective businesses.

(c) Set forth on Schedule 4.11(c) is a complete and accurate summary of the insurance maintained by the Issuer and its Subsidiaries as of the Closing Date. The Issuer and its Subsidiaries have insurance meeting the requirements of Section 5.8, and such insurance policies are in full force and effect.

(d) All assets of the Issuer and its Subsidiaries, whether owned, leased, or managed, are in good repair, working order and condition, ordinary wear and tear excepted, in accordance with the terms and conditions of any applicable lease or license agreement, except where the failure to be in such good repair, working order or condition would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 4.12 Disclosure. Each of the written reports (including, without limitation, all reports that the Issuer is required to file with the Securities and Exchange Commission), financial statements, certificates or other information (other than the Profit Plans, pro formas, budgets, other forward-looking information (which shall be subject solely to the representation set forth in the last sentence of Section 4.4(a)), information regarding third parties and general economic or industry information) (but only to the Issuer's knowledge with respect to any information provided by another Person that is not an Affiliate) furnished by or on behalf of the Issuer to the Collateral Agent or any Purchaser in connection with the negotiation of this Agreement or any other Note Document or delivered hereunder or thereunder (as modified or supplemented by any other information so furnished), is or will be, when furnished and taken as a whole, complete and correct in all material respects and does not or will not, when furnished and taken as a whole, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made (as modified or supplemented by any other information so furnished).

Section 4.13 Labor Relations. There are no strikes, lockouts or other material labor disputes or grievances against the Issuer or any of its Subsidiaries, or, to the Issuer's knowledge, threatened against or affecting the Issuer or any of its Subsidiaries, and no significant unfair labor practice charges or grievances are pending against the Issuer or any of its Subsidiaries, or, to the Issuer's knowledge, threatened against any of them before any Governmental Authority. All payments due from the Issuer or any of its Subsidiaries pursuant to the provisions of any collective bargaining agreement have been paid or accrued as a liability on the books of the Issuer or any such Subsidiary, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

Section 4.14 Subsidiaries. Schedule 4.14 sets forth the name of, the ownership interest of the applicable Note Party in, the jurisdiction of incorporation or organization of, and the organizational type of each Subsidiary of the Issuer and the other Note Parties and identifies each Subsidiary that is a Subsidiary Note Party, in each case as of the Closing Date. As of the Closing Date, the Issuer has no Subsidiaries other than those specifically disclosed on Schedule 4.14 and no Note Party owns any Capital Stock in any Person other than those specifically disclosed on Schedule 4.14. All of the outstanding Capital Stock in each of the Issuer's Subsidiaries that is a corporation has been validly issued, is fully paid and non-assessable, and all such Capital Stock owned by any Note Party is owned by the record owners in the amounts specified on Schedule 4.14 as of the Closing Date, free and clear of all Liens except those created under the Collateral Documents, the First Lien Collateral Documents and nonconsensual Liens that arise by operation of law. None of the Note Parties or any of their Subsidiaries has, as of the Closing Date, any issued and outstanding Disqualified Capital Stock except as otherwise specifically disclosed on Schedule 4.14.

Section 4.15 Solvency. After giving effect to the execution and delivery of the Note Documents, the issuance and purchase of the Notes under this Agreement and the consummation of all transactions contemplated by such Note Documents, the Issuer and its Subsidiaries on a consolidated basis are Solvent.

Section 4.16 Deposit and Disbursement Accounts. Schedule 4.16 lists all banks and other financial institutions at which any Note Party maintains deposit accounts, lockbox accounts, disbursement accounts, investment accounts or other similar accounts as of the Closing Date, and such Schedule correctly identifies the name, address and telephone number of each financial institution, the name in which the account is held, the type of the account, the complete account number therefor, and whether such account is a Government Receivables Account.

Section 4.17 Collateral Documents.

(a) The Guaranty and Security Agreement and each other Collateral Document is effective to create in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof to the extent such a security interest can be created by authentication of a written security agreement under Articles 8 and 9 of the UCC. In the case of certificated Capital Stock pledged pursuant to the Guaranty and Security Agreement, when certificates representing such Capital Stock are delivered to the Collateral Agent (or the First Lien Collateral Agent, as bailee for the Collateral Agent), and in the case of the other Collateral described in the Guaranty and Security Agreement or any other Collateral Document (other than deposit accounts and investment property) in which a Lien may be perfected by the filing of a financing statement, when financing statements are filed in the appropriate filing offices as specified in Article 9 of the UCC (which, as of the Closing Date, for each of the Note Parties is the filing office set forth for each Note Party on Schedule 3 to the Guaranty and Security Agreement), in each case, the Collateral Agent, for the benefit of the Secured Parties, shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Note Parties in such Collateral (including such Capital Stock) and the proceeds thereof, as security for the Obligations, in each case prior and superior in right to any other Person (except for Specified Permitted Liens). In the case of Collateral that consists of deposit accounts (other than a Government Receivables Account) or investment property, when an Account Control Agreement is executed and delivered by all parties thereto with respect to such deposit accounts or investment property, the Collateral Agent, for the benefit of the Secured Parties, shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Note Parties in such Collateral and the proceeds thereof, as security for the Obligations, prior and superior to any other Person (except for Specified Permitted Liens) except as provided under the applicable Account Control Agreement with respect to the financial institution party thereto.

(b) When the filings in clause (a) of this Section are made and when, if applicable, the Copyright Security Agreements are filed in the United States Copyright Office, the Collateral Agent, for the benefit of the Secured Parties, shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Note Parties in the Copyrights subject to such Copyright Security Agreement, if any, in which a security interest may be perfected by filing, recording or registering a security agreement, financing statement or analogous document in the United States Copyright Office, as applicable, in each case prior and superior in right to any other Person (except for Specified Permitted Liens).

(c) Each Mortgage, if any, is effective to create in favor of the Collateral Agent for the ratable benefit of the Secured Parties a legal, valid and enforceable Lien on all of such Note Party's right, title and interest in and to the Real Estate of such Note Party covered thereby and the proceeds thereof, and when such Mortgage is filed in the real estate records where the respective Mortgaged Property is located, such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of such Note Party in such Real Estate and the proceeds thereof, in each case prior and superior in right to any other Person, other than with respect to Permitted Encumbrances and Specified Permitted Liens.

Section 4.18 Material Agreements. As of the Closing Date, all Material Agreements of the Issuer and its Subsidiaries are listed on Schedule 4.18, and each such Material Agreement is in full force and effect. As of the Closing Date, the Issuer has delivered to the Purchasers a true, complete and correct copy of each Material Agreement (including all schedules, exhibits, amendments, supplements, modifications, assignments and all other documents delivered pursuant thereto or in connection therewith).

Section 4.19 Sanctions; Anti-Terrorism and Anti-Corruption Laws.

(a) None of the Issuer nor any of its Affiliates or, to the Issuer's and its Subsidiaries' knowledge, their respective officers, directors, brokers or agents of such Person or Affiliate (i) has violated any Anti-Terrorism Laws or Sanction, (ii) has engaged in any transaction, investment, undertaking or activity that conceals the identity, source or destination of the proceeds from any category of prohibited offenses designated by the Organization for Economic Co-operation and Development's Financial Action Task Force on Money Laundering, (iii) is a Person whose name appears on the list of Specially Designated Nationals and Blocked Persons published by OFAC (an "OFAC Listed Person") or is otherwise a Sanctioned Person, (iv) is an agent, department, or instrumentality of, or is otherwise beneficially owned by, controlled by or acting on behalf of, directly or indirectly, (A) any OFAC Listed Person or (B) any other Sanctioned Person or Sanctioned Country, or (v) is otherwise blocked, the subject or target of Sanctions or engaged in any activity in violation of Sanctions or Anti-Terrorism Laws (each OFAC Listed Person, Sanctioned Person, Sanctioned Country and each other Person, entity, organization and government of a country described in clauses (iii), (iv) or (v), a "Blocked Person"). Neither the Issuer nor any Controlled Affiliate thereof has been notified that its name appears or may in the future appear on a list of Persons that engage in investment or other commercial activities in Iran or any other Sanctioned Country. No part of the proceeds from the Notes issued and purchased hereunder constitutes or will constitute funds obtained on behalf of any Blocked Person or will otherwise be used by the Issuer, directly or indirectly, or lent, contributed or otherwise made available to any Person (x) in connection with any investment in, or any transactions or dealings with, any Blocked Person, (y) to fund any activities or business of or with any Sanctioned Person, or in any Sanctioned Country or (z) otherwise in any manner that would result in a violation of Sanctions by any Person (including any Person participating in the Notes, whether as underwriter, advisor, investor or otherwise).

(b) Neither the Issuer nor any of its Affiliates or, to the Issuer's knowledge, their respective officers, directors, brokers or agents acting or benefiting in any capacity in connection with the Notes (i) deals in or otherwise engages, or has dealt or otherwise engaged, in any transaction related to, any property or interests in property blocked pursuant to any Anti-Terrorism Law or Sanction, (ii) engages in or conspires to, or engaged or conspired 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 or Sanction, (iii) has been found in violation of, charged with, or convicted under any Anti-Terrorism Law, (iv) to the Issuer's knowledge after making due inquiry, is under investigation by any Governmental Authority for possible violation of Anti-Terrorism Laws or any Sanctions, (v) has been assessed civil penalties under any Anti-Terrorism Laws or any Sanctions, or (vi) has had any of its funds seized or forfeited in an action under any Anti-Terrorism Laws. The Issuer has established policies, procedures and controls which are designed (and otherwise comply with applicable law) to ensure that each of the Issuer and each Controlled Affiliate thereof, and each of their respective directors, officers, employees and agents, is and will continue to be in compliance with all applicable current and future Anti-Terrorism Laws and Sanctions.

(c) None of the Issuer nor any of its Affiliates (i) has been charged with, or convicted of bribery or any other anti-corruption related activity under any applicable Anti-Corruption Laws, (ii) to the Issuer's knowledge after making due inquiry, is under investigation by any Governmental Authority for possible violation of Anti-Corruption Laws, or (iii) has been assessed civil or criminal penalties under any Anti-Corruption Laws. The Issuer and its Subsidiaries will not use any part of the proceeds of the Notes, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the Anti-Corruption Laws. The Issuer and, to the Issuer's knowledge, its respective directors, officers and employees and agents are in compliance with all Anti-Corruption Laws, and the Issuer has established policies, procedures and controls which are designed (and otherwise comply with applicable law) to ensure that the Issuer and each Controlled Affiliate thereof, and each of their respective directors, officers, employees and agents, is and will continue to be in compliance with all applicable current and future Anti-Corruption Laws.

Section 4.20 Compliance with Healthcare Laws.

(a) The Issuer and each of its Subsidiaries is in compliance in all respects with all Healthcare Laws, except for such non-compliance which would not reasonably be expected to have a Healthcare Material Adverse Effect. The Issuer and its Subsidiaries participate in and have not been excluded from the Governmental Payor Arrangements listed on Schedule 4.20(a). A list of all of the Issuer's and its Subsidiaries' existing (i) Medicare provider numbers and Medicaid provider numbers, (ii) Medicare supplier numbers and Medicaid supplier numbers, and (iii) all other Governmental Payor provider agreements and numbers, excluding TRICARE and CHAMPUS, CHAMPVA and the Veteran's Administration, pertaining to the business of the Issuer or any of its Subsidiaries as of the Closing Date or, if such contracts do not exist, other documentation evidencing such participation as of the Closing Date are set forth on Schedule 4.20(a). Each of the Issuer's and its Subsidiaries' existing Third Party Payor Arrangements pursuant to which Issuer and its Subsidiaries received $500,000 or more in payment in calendar year 2016 is set forth on Schedule 4.20(a). Each of the Issuer and its Subsidiaries has entered into and maintains all Governmental Payor Arrangements and Third Party Payor Arrangements as are necessary to conduct its respective business as currently conducted. The Governmental Payor Arrangements and Third Party Payor Arrangements to which the Issuer or a Subsidiary is a party constitute valid and binding obligations of the Issuer or such Subsidiary, enforceable against the Issuer or such Subsidiary in accordance with their respective terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity) and, to the knowledge of the Issuer, are in full force and effect, except as would not, either individually or in the aggregate, reasonably be expected to have a Healthcare Material Adverse Effect or as disclosed on Schedule 4.20(a). To the knowledge of the Issuer, neither the Issuer nor any of its Subsidiaries is in default under any Governmental Payor Arrangement or Third Party Payor Arrangement to which it is a party and, to the knowledge of the Issuer, the other parties thereto are not in default thereunder, except as would not have a Healthcare Material Adverse Effect. Each of the Issuer and its Subsidiaries (i) duly holds, and is in good standing with respect to, such Licenses as are necessary to own its respective assets and to conduct its respective business (including without limitation such Licenses as are required under such Healthcare Laws as are applicable thereto, and all Reimbursement Approvals), except where the absence of such a License would not reasonably be expected to have a Healthcare Material Adverse Effect and (ii) where applicable to its business, has obtained and maintains Medicaid and Medicare provider and supplier numbers. Schedule 4.20(a) sets forth all such healthcare Licenses held by each of the Issuer and its Subsidiaries as of the Closing Date. There is no pending or, to the knowledge of the Issuer, threatened material Limitation of any such License, Medicaid provider or supplier number, or Medicare provider or supplier number of the Issuer or any of its Subsidiaries, except for such Limitations as would not reasonably be expected to have a Healthcare Material Adverse Effect.

(b) For purposes of the Stark Law, to the extent that any services provided by the Issuer or its Subsidiaries are designated health services (as defined by the Stark Law), (i) none of such services involve, arise from, or occur in connection with "referrals" as defined by Stark Law or as proscribed thereunder absent the applicability or availability of a statutory or regulatory exception to the referral prohibitions set forth thereunder, and (ii) none of such services are provided by the Issuer or any of its Subsidiaries for the benefit of any of the foregoing, absent the applicability or availability of a statutory or regulatory exception to the referral prohibitions set forth thereunder, in each case in the case of the immediately preceding clauses (i) and (ii), except to the extent that such failures, violations or non-compliance would not reasonably be expected to have a Healthcare Material Adverse Effect.

(c) Except as would not reasonably be expected to have a Material Adverse Effect, each of the Issuer and its Subsidiaries holds all Accreditations necessary or required by applicable Requirements of Law for the operation of its business (including accreditation by an appropriate organization necessary to receive payment and compensation and to participate under Medicare and Medicaid) (individually, a "Company Accreditation," and collectively, the "Company Accreditations"). There is no pending or, to the knowledge of the Issuer, threatened Limitation of any such Company Accreditations, except as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each of the Issuer and its Subsidiaries is in compliance with the terms of the Company Accreditations.

(d) Each employee of the Issuer and each of its Subsidiaries duly holds all Licenses (to the extent required) to provide professional services to patients by each state or state agency or commission, or any other Governmental Authority having jurisdiction over the provision of such services required to enable such employee to provide the professional services necessary to enable each of the Issuer and its Subsidiaries to operate its business as currently operated and in connection with the duties performed by such employee, except as would not reasonably be expected to have a Material Adverse Effect. There is no pending or, to the knowledge of the Issuer, threatened Limitation of any such required Licenses with respect to any employee of the Issuer and each of its Subsidiaries, except where such Limitation would not, either individually or in the aggregate, reasonably be expected to have a Healthcare Material Adverse Effect. Except as would not, either individually or in the aggregate, reasonably be expected to have a Healthcare Material Adverse Effect, each employee of the Issuer and its Subsidiaries is in compliance with the terms of all such Licenses.

(e) All reports, documents, schedules, statements, filings, submissions, forms, registrations, notices, approvals and other documents required to be filed, obtained, maintained or furnished pursuant to any Governmental Payor Arrangement, Third Party Payor Arrangement, License, Company Accreditation, and other applicable Healthcare Laws by the Issuer or any of its Subsidiaries to any Governmental Authority (individually, "Company Regulatory Filings" and collectively, "Company Regulatory Filings") have been so filed, obtained, maintained or furnished, and all such Company Regulatory Filings were complete and correct on the date filed (or were corrected in or supplemented by a subsequent filing), except where such failure would not reasonably be expected to have a Healthcare Material Adverse Effect, and each of the Issuer and its Subsidiaries has timely paid all amounts, Taxes, fees and assessments due and payable in connection therewith, except where the failure to make such payments on a timely basis would not reasonably be expected to have a Healthcare Material Adverse Effect. The Issuer and each of its Subsidiaries has maintained all records required to be maintained under all applicable Requirements of Law with any Governmental Authorities (including all Governmental Payor Arrangements in which it participates, as required by Healthcare Laws), except where the failure to do so would not reasonably be expected to have a Healthcare Material Adverse Effect.

(f) Since December 31, 2016, none of the Issuer nor any of its Subsidiaries, nor, to the knowledge of the Issuer, any employee or contractor of the Issuer or any of its Subsidiaries has been, or to the knowledge of the Issuer has been threatened to be, (i) excluded from any Governmental Payor Arrangement pursuant to 42 U.S.C. § 1320a-7b and related regulations, (ii) "suspended" or "debarred" from selling products to the U.S. government or its agencies pursuant to the Federal Acquisition Regulation, relating to debarment and suspension applicable to federal government agencies generally (42 C.F.R. Subpart 9.4), or other applicable Requirements of Law, (iii) debarred, disqualified, suspended or excluded from participation in Medicare, Medicaid or any other governmental health care program or is listed on the General Services Administration list of excluded parties, nor is any such debarment, disqualification, suspension or exclusion, to the knowledge of a Note Party, threatened or pending, or (iv) made a party to any other action by any Governmental Authority that may prohibit it from selling products or providing services to any Governmental Authority or other purchaser pursuant to any Requirement of Law. Except for the payment of the amounts expressly provided for in the Exjade Settlement, none of the Issuer nor any of its Subsidiaries nor, to the knowledge of the Issuer, any employee or contractor of the Issuer or any of its Subsidiaries is party to a corporate integrity agreement, consent order, consent decree, permanent injunction or other settlement agreement with any Governmental Authority or Third Party Payor or otherwise pursuant to any Governmental Payor Arrangement, Third Party Payor Arrangement, License, or Company Accreditation, including, without limitation, any additional corporate integrity agreement, consent order, consent decree, permanent injunction or other settlement agreement arising out of allegations involving the Issuer and the prescription drug known as Exjade, which individually (or, together with any related Settlements (other than the Exjade Settlement), in the aggregate) (i) would reasonably be expected to have a Healthcare Material Adverse Effect or (ii) requires the payment of money in an amount in excess of $12,500,000.

(g) Schedule 4.20(g) sets forth a list of all notices received since December 31, 2016 of material noncompliance (including FDA 483 letters, FDA correspondence, board of pharmacy inspection reports, and similar notices), requests for material remedial action, investigations, return of overpayment or imposition of fines (whether ultimately paid or otherwise resolved) by any Governmental Authority or Third Party Payor or pursuant to any Governmental Payor Arrangement, Third Party Payor Arrangement, License, or Company Accreditation, but does not include Routine Payor Audits (the "Health Care Audits"). Each of the Issuer and its Subsidiaries 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 Healthcare Material Adverse Effect. Neither the Issuer nor any of its Subsidiaries has any (A) uncured deficiency that could lead to the imposition of a remedy, (B) existing accrued and/or unpaid indebtedness or overpayment to any Governmental Authority or Governmental Payor, including Medicare or Medicaid, or (C) existing accrued and/or unpaid overpayment amounts owing under any finally resolved audit or investigation by any Governmental Payor or Third Party Payor, excepting any of the foregoing that would not reasonably be expected to have a Healthcare Material Adverse Effect.

(h) The execution and delivery of the Note Documents, and each of the Issuer's and its Subsidiaries' performance thereunder (including the performance of the pre- and post- closing notices and applications as provided in the Note Documents) will not (i) result in the loss of or limitation of any License, Company Accreditations or Company Reimbursement Approvals or (ii) reduce receipt of the ongoing payments or reimbursements pursuant to the Company Reimbursement Approvals that the Issuer or any of its Subsidiaries is receiving as of the date hereof.

(i) The Issuer and its Subsidiaries currently maintain a corporate compliance program and quality management program reasonably designed to promote compliance with applicable Healthcare Laws (except for noncompliance that would not reasonably be expected to have a Healthcare Material Adverse Effect).

Section 4.21 HIPAA/HITECH Compliance. To the extent that and for so long as the Issuer or any of its Subsidiaries is a "covered entity" within the meaning of HIPAA and the HITECH Act, each of the Issuer and its Subsidiaries (a) has undertaken or will promptly undertake all necessary compliance efforts required by HIPAA and the HITECH Act; (b) has developed or will develop a detailed plan for becoming HIPAA and HITECH Compliant (a "HIPAA/HITECH Compliance Plan"); and (c) has implemented or will implement those provisions of such HIPAA/HITECH Compliance Plan necessary to ensure that each of the Issuer and its Subsidiaries is or becomes HIPAA and HITECH Compliant, except to the extent in each case that such failures would not reasonably be expected to have a Healthcare Material Adverse Effect. For purposes hereof, "HIPAA and HITECH Compliant" shall mean that each of the Issuer and its Subsidiaries (i) is or will be in compliance (except for non-compliance that would not reasonably be expected to have a Healthcare Material Adverse Effect) with (A) each of the applicable requirements of the so-called "Administrative Simplification" provisions of HIPAA and (B) any or all requirements set forth in the HITECH Act, including, but not limited to, any breach notification requirements, and (ii) is not and would not reasonably be expected to become the subject of any civil or criminal penalty, process, claim, action or proceeding, or any administrative or other regulatory review, survey, process or proceeding (other than routine surveys or reviews conducted by any Government Payor or other accreditation entity) that would reasonably be expected to have a Healthcare Material Adverse Effect.

Section 4.22 Reimbursement.

(a) Except as disclosed in Schedule 4.22(a), with respect to billings by each of the Issuer and its Subsidiaries as of the Closing Date, each of the Issuer and its Subsidiaries is in compliance with all Requirements of Law and the written material reimbursement policies, rules and regulations of Governmental Payors and Third Party Payors, including, without limitation, adjustments under any capitation arrangement, fee schedule, discount formula or cost-based reimbursement except the failure to comply with which would not reasonably be expected to have a Healthcare Material Adverse Effect. Except as would not be expected to have a Healthcare Material Adverse Effect, each of the Issuer and its Subsidiaries holds all Reimbursement Approvals necessary for the operation of its business as currently operated (individually, a "Company Reimbursement Approval," and collectively, the "Company Reimbursement Approvals"). There is no pending or, to the knowledge of the Issuer, threatened Limitation of any such Company Reimbursement Approvals, except as would not reasonably be expected to have a Healthcare Material Adverse Effect or as disclosed on Schedule 4.22(a). Except as would not reasonably be expected to have a Healthcare Material Adverse Effect or as disclosed on Schedule 4.22(a), each of the Issuer and its Subsidiaries is in compliance with the terms of the Company Reimbursement Approvals.

(b) Except as would not reasonably be expected to have a Healthcare Material Adverse Effect, the accounts receivable of each of the Issuer and its Subsidiaries have been properly adjusted in all material respects to reflect the reimbursement policies under all applicable Requirements of Law and other Governmental Payor Arrangements or Third Party Payor Arrangements, to which the Issuer or any of its Subsidiaries is subject, and such accounts receivable do not exceed amounts the Issuer or such Subsidiary is entitled to receive under any capitation agreement, fee schedule, discount formula, cost-based reimbursement or other adjustment or limitation to usual charges. There has been no intentional overbilling or overcollection pursuant to any Governmental Payor Arrangements or Third Party Payor Arrangement other than as created by routine adjustments and disallowances made in the ordinary course of business by the Governmental Payors and Third Party Payors with respect to such billings.

Section 4.23 **Fraud and Abuse.** Except as would not, individually or in the aggregate, reasonably be expected to have a Healthcare Material Adverse Effect, neither the Issuer nor any of its Subsidiaries has engaged in any activities that (a) are prohibited under 42 U.S.C. §§ 1320a-7b, or the regulations promulgated thereunder, or related Requirements of Law, or (b) are prohibited by rules of professional conduct, or (c) are prohibited under any statute or the regulations promulgated pursuant to such statutes, including, without limitation, the following: (i) knowingly and willfully making or causing to be made a false statement or misrepresentation of a material fact in any application for any benefit or payment; (ii) knowingly and willfully making or causing to be made any false statement or misrepresentation of a material fact for use in determining rights to any benefit or payment; (iii) failure to disclose knowledge by a claimant of the occurrence of any event affecting the initial or continued right to any benefit or payment on its own behalf or on behalf of another with intent to secure such benefit or payment fraudulently; and (iv) knowingly and willfully soliciting or receiving any illegal remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind or offering to pay or receive such remuneration (x) in return for referring an individual to a Person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by any Governmental Payor, or (y) in return for purchasing, leasing, or ordering or arranging for or recommending purchasing, leasing or ordering any good facility, service, or item for which payment may be made in whole or in part by any Governmental Payor. Between January 1, 2017 and the Closing Date, neither the Issuer nor any of its Subsidiaries has received a subpoena issued by any Governmental Authority with respect to a possible violation of Healthcare Laws by the Issuer or any of its Subsidiaries (but excluding Routine Payor Audits).

Section 4.24 **EEA Financial Institutions; Other Regulations.** No Note Party is an EEA Financial Institution.

Section 4.25 **Offer of Notes; Private Offering.** Subject to the accuracy of each Purchaser's several (and not joint) representations and warranties set forth in Section 2.25:

(a) during the six-month period ending on the commencement of the offer of the Notes and concurrently with the offering of the Notes, no Note Party, its respective Rule 501 Affiliates or any person acting on its or any of their behalf, directly or indirectly, offered the Notes or any part thereof or any similar securities for issue or sale to, or solicited any offer to buy any of the same from, any person other than the Purchasers and less than 15 other Persons;

(b) no form of general solicitation or general advertising was used by any Note Party or any of their representatives in connection with the offer or sale of the Notes to the Purchasers;

(c) no registration of the Notes pursuant to the provisions of the Securities Act or the state securities "blue sky" laws will be required for the offer, sale or issuance of the Notes by the Issuer to the Purchasers pursuant to this Agreement and it has not taken and will not take any actions which would bring the issuance and sale of the Notes within the provisions of Section 5 of the Securities Act or the registration or qualification provisions of any such Laws; and

(d) the Notes are being offered and sold only to "accredited investors" (as defined in Rule 501 under the Securities Act).

Section 4.26 **Designation as Credit Facilities.** As contemplated by the definition of "Credit Facilities" contained in the Senior Notes Indenture, the Notes, this Agreement, the First Lien Notes and the First Lien Note Purchase Agreement each qualify, and each hereby is designated as, a "Credit Facility" for purposes of the Senior Notes Indenture and shall be included in the definition of "Credit Facilities" as so set forth in the Senior Notes Indenture.

ARTICLE V

AFFIRMATIVE COVENANTS

The Issuer covenants and agrees that so long as any Purchaser has a Commitment or Delayed Draw Commitment hereunder or any Obligation remains unpaid or outstanding (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made):

Section 5.1 Financial Statements and Other Information. The Issuer will deliver to each Purchaser:

(a) as soon as available and in any event within 90 days after the end of each Fiscal Year of the Issuer, a copy of the annual audited report for such Fiscal Year for the Issuer and its Subsidiaries, containing a consolidated balance sheet of the Issuer and its Subsidiaries as of the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows (together with all footnotes thereto) of the Issuer and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, and reported on by independent public accountants of nationally recognized standing (without a "going concern" or like qualification, exception or explanation and without any qualification or exception as to the scope of such audit (except any such qualification arising as a result of the impending Maturity Date (as a result of clause (i) of such definition) or "Maturity Date" (as defined in the First Lien Note Purchase Agreement) (as a result of clause (i) of such definition)) to the effect that such financial statements present fairly in all material respects the financial condition and the results of operations of the Issuer and its Subsidiaries for such Fiscal Year on a consolidated basis in accordance with GAAP (as in effect at the time such financial statements were prepared and subject to Section 1.3) consistently applied (except as expressly noted therein) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards;

(b) as soon as available and in any event within 45 days after the end of each Fiscal Quarter of the Issuer (other than the last Fiscal Quarter in each Fiscal Year), an unaudited consolidated balance sheet of the Issuer and its Subsidiaries as of the end of such Fiscal Quarter and the related unaudited consolidated statements of income and cash flows of the Issuer and its Subsidiaries for such Fiscal Quarter and the then elapsed portion of such Fiscal Year, setting forth in each case in comparative form the figures for the corresponding Fiscal Quarter and the corresponding portion of the Issuer's previous Fiscal Year and the corresponding figures for the Profit Plan for the current Fiscal Year;

(c) concurrently with the delivery of the financial statements referred to in clauses (a) and (b) of this Section, a Compliance Certificate signed by an appropriate Responsible Officer of the Issuer (i) certifying as to whether there exists a Default or Event of Default on the date of such certificate and, if a Default or an Event of Default then exists, specifying the details thereof and the action, if any, which the Issuer has taken or proposes to take with respect thereto, (ii) if applicable, setting forth in reasonable detail calculations demonstrating compliance with the financial covenant set forth in Article VI, (iii) specifying any change in the identity of the Subsidiaries as of the end of such Fiscal Year or Fiscal Quarter from the Subsidiaries identified to the Purchasers on the Closing Date or as of the most recent Fiscal Year or Fiscal Quarter, as the case may be, and (iv) stating whether any change in GAAP or the application thereof has occurred since the date of the most recently delivered audited financial statements of the Issuer and its Subsidiaries, and, if any change has occurred, specifying the effect of such change on the financial statements accompanying such Compliance Certificate;

(d) concurrently with the delivery of the financial statements referred to in clause (a) above, a certificate of the accounting firm that reported on such financial statements (which may be included in the opinion or other reports delivered by such accounting firm pursuant to clause (a)) stating that, in making the examination necessary to prepare such financial statements, no knowledge was actually obtained of the occurrence and continuance of any Default or Event of Default, except as specified in such certificate (it being understood that no special or separate inquiry or review will have been made or shall be required to be made with respect to the existence of any Default or Event of Default and that such certificate shall be limited to the items that independent certified public accountants are permitted to cover in such certificates pursuant to their professional standards and customs of the profession);

(e) as soon as available and in any event within 90 days after the commencement of any Fiscal Year, a Profit Plan for such Fiscal Year;

(f) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all functions of said Commission, or with any national securities exchange, or distributed by the Issuer to its shareholders generally, as the case may be;

(g) promptly following any request therefor, such other reports or information including with respect to the results of operations, business affairs and financial condition of the Issuer or any of its Subsidiaries as the Collateral Agent or any Purchaser may reasonably request; and

(h) until Consolidated EBITDA for the period of four Fiscal Quarters ending on the last day of the most recent Fiscal Quarter for which financial statements have been (or were required to be) delivered hereunder exceeds $45,000,000, deliver to each private-side Purchaser as soon as available and in any event within 30 days after the end of each fiscal month of the Issuer, an unaudited consolidated balance sheet of the Issuer and its Subsidiaries as of the end of such fiscal month and the related unaudited consolidated statements of income and cash flows of the Issuer and its Subsidiaries for such fiscal month and the then elapsed portion of such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the Profit Plan for the current Fiscal Year; provided the Purchasers acknowledge and agree that (x) the financial statements described in this clause (h) are confidential and constitute material non-public information of the Issuer and (y) no Purchaser (including any private-side Purchaser) shall distribute or furnish a copy of all or any portion of the financial statements described in this clause (h) to any Purchaser that is not a private-side Purchaser other as expressly permitted under Section 10.11(iv).

So long as the Issuer is required to file periodic reports under Section 13(a) or Section 15(d) of the Exchange Act, the Issuer may satisfy its obligation to deliver the financial statements referred to in clauses (a) and (b) above by delivering the Issuer's Form 10-K or 10-Q filed with the Securities and Exchange Commission within the applicable time periods set forth in clauses (a) and (b), as applicable.

Section 5.2 Notices of Material Events. The Issuer will furnish to the Collateral Agent and each Purchaser prompt written notice of the following:

(a) the occurrence of any Default or Event of Default;

(b) the filing or commencement of, or any material development in, any action, suit or proceeding by or before any arbitrator or Governmental Authority against the Issuer or any of its Subsidiaries which would reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any event or any other development by which the Issuer or any of its Subsidiaries (i) fails to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) becomes subject to any Environmental Liability, (iii) receives written notice of any claim with respect to any Environmental Liability, or (iv) becomes aware of any basis for any Environmental Liability, in each case which, either individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect;

(d) promptly and in any event within 15 days after (i) the Issuer or any of its Subsidiaries knows or has reason to know that any ERISA Event that (individually or together with all other ERISA Events) would reasonably be expected to have a Material Adverse Effect has occurred, a certificate of the chief financial officer of the Issuer describing such ERISA Event and the action, if any, proposed to be taken with respect to such ERISA Event and a copy of any notice filed with the PBGC or the IRS pertaining to such ERISA Event and any notices received by the Issuer or such Subsidiary (or, if applicable, an ERISA Affiliate) from the PBGC or any other governmental agency with respect thereto and (ii) becoming aware that there has been a material increase in Unfunded Pension Liabilities (not taking into account Plans with negative Unfunded Pension Liabilities) or a Plan is, or is expected to be, in at risk status under Title IV of ERISA since the date the representations hereunder are given or deemed given, or from any prior notice, as applicable such that the resulting Unfunded Pension Liabilities, if incurred, or the at risk status, as applicable, would reasonably be expected to have a Material Adverse Effect, a detailed written description thereof from the chief financial officer of the Issuer;

(e) the receipt by the Issuer or any of its Subsidiaries of any written notice of an alleged default or event of default, with respect to the First Lien Note Purchase Agreement or any Material Indebtedness of the Issuer or any of its Subsidiaries;

(f) upon receipt thereof, copies of all final audit reports and all final management letters relating to the Issuer or any of its Subsidiaries submitted by the Issuer's primary accountants or primary auditors in connection with each annual, interim or special audit of the books of the Issuer or any of its Subsidiaries (provided that, in the event that the Issuer engages such accountants or auditors to perform a specific review, test, valuation or other analysis of all or any portion of the Issuer's financial condition or financial performance, the results of such engagement shall not be required to be delivered to the Collateral Agent or the Purchasers to the extent that such results are not otherwise required to be delivered pursuant to another provision of this Agreement);

(g) written notice of the receipt by the Issuer or any of its Subsidiaries from any Governmental Authority or other Person of (1) any notice asserting any failure by the Issuer or any of its Subsidiaries to be in compliance with applicable Requirements of Law or that threatens the taking of any action against the Issuer or any of its Subsidiaries or sets forth circumstances in any such event where the failure or the taking of action would reasonably be expected to have a Material Adverse Effect, (2) any notice of any actual or threatened in writing Limitation with respect to any Governmental Payor Arrangement, Third Party Payor Arrangement, License, or Company Accreditation of the Issuer or any of its Subsidiaries, where such action would, either individually or in the aggregate with other similar actions, reasonably be expected to have a Material Adverse Effect, or (3) any subpoena, search warrant, civil investigative demand, criminal action or threat of criminal action, FDA warning letter, FDA 483 letter or other request or investigation by a Governmental Authority with respect to a possible violation of Healthcare Laws by the Issuer or any of its Subsidiaries (but excluding (A) state licensure and Medicare certification and participation surveys by a Governmental Authority with respect to a possible violation of Healthcare Laws, unless any deficiencies are of a kind that do result or likely will result in the issuance of a notice of suspension or termination of any License, payment, or provider or supplier number or agreement, and (B) Routine Payor Audits);

(h) if any Default or Event of Default is in existence, if requested by any Purchaser, furnish to each Purchaser, to the maximum extent permitted by applicable Requirements of Law, (i) copies of all Company Regulatory Filings, (ii) copies of all Licenses, Company Accreditations and Company Reimbursement Approvals, as the same may be renewed or amended; (iii) copies of all 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 Requirements of Law), all subject to any limitations on disclosure included in any Requirement of Law;

(i) any default or material amendment under, or termination of, (i) that certain Facility Participation Agreement effective as of June 1, 2009, with United HealthCare Insurance Company, contracting on behalf of its Oxford Health Plans (NJ), (ii) that certain Facility Participation Agreement effective as of June 1, 2009, with United HealthCare Insurance Company, contracting on behalf of itself and UnitedHealthcare of the Midwest, (iii) that certain Ancillary Provider Participation Agreement effective as of June 1, 2009, with United HealthCare Insurance Company, contracting on behalf of itself and UnitedHealthcare of New York, or (iv) that certain Ancillary Provider Participation Agreement effective as of June 1, 2009, with UnitedHealthcare of New York, Inc.; and

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

The Issuer will furnish to the Collateral Agent and each Purchaser the following:

(x) promptly and in any event at least 30 days prior thereto, notice of any change (i) in any Note Party's legal name, (ii) in any Note Party's chief executive office, its principal place of business or any office in which it maintains books or records, (iii) in any Note Party's identity or legal structure, (iv) in any Note Party's federal taxpayer identification number or organizational number or (v) in any Note Party's jurisdiction of organization; and

(y) promptly upon request therefor, such other information and reports relating to the past, present or anticipated future financial condition, operations, plans, budgets and projections of the Issuer and each of its Subsidiaries, as the Collateral Agent or any Purchaser at any time or from time to time may reasonably request.

Each notice or other document delivered under this Section shall be accompanied by a written statement of a Responsible Officer setting forth the details of the event or development requiring such notice or other document and any action taken or proposed to be taken with respect thereto.

Section 5.3 Existence; Conduct of Business. The Issuer will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and maintain in full force and effect its legal existence and its respective material rights, licenses, permits, privileges, franchises, Patents, Copyrights, Trademarks, trade names and all other Intellectual Property Rights that are material for the conduct of its business, except where failure to do so would not reasonably be expected to result in a Material Adverse Effect; provided that nothing in this Section shall prohibit any transaction that is expressly permitted hereunder.

Section 5.4 Compliance with Laws. The Issuer will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and requirements of any Governmental Authority applicable to its business and properties, including, without limitation, all Environmental Laws, ERISA and OSHA, except where the failure to do so, either individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. The Issuer will, and will cause each of its Subsidiaries to, maintain in effect policies, procedures and controls designed to ensure compliance by the Issuer and its Subsidiaries, the Controlled Affiliates thereof and, to the Issuer's knowledge, their respective directors, officers, employees and agents with Sanctions, Anti-Corruption Laws, and Anti-Terrorism Laws.

Section 5.5 Payment of Obligations. The Issuer will, and will cause each of its Subsidiaries to, pay and discharge at or before maturity all of its material obligations and liabilities (including, without limitation, all taxes, assessments and other governmental charges, levies and all other claims that could result in a statutory Lien) before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Issuer or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest would not reasonably be expected to result in a Material Adverse Effect.

Section 5.6 Books and Records. The Issuer will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities to the extent necessary to prepare the consolidated financial statements of the Issuer in conformity with GAAP (subject to the terms of this Agreement with respect to such financial statements).

Section 5.7 Visitation and Inspection. The Issuer will, and will cause each of its Subsidiaries to, permit any representative of the Collateral Agent or any Purchaser to visit and inspect its properties, to examine its books and records and to make copies and take extracts therefrom, and to discuss its affairs, finances and accounts with any of its officers and with its independent certified public accountants (provided that the Issuer is provided reasonable prior notice of any discussion with its auditors or accountants and is afforded an opportunity to participate in such discussions), all at such reasonable times and subject to reasonable prior notice to the Issuer or such Subsidiary; provided that, so long as no Event of Default has occurred and is continuing, visits and inspections under this Section 5.7 shall be limited to one time per Fiscal Year for the Collateral Agent and all Purchasers. Any Related Party of the Collateral Agent or any Purchaser that attends or participates in any such visit or inspection shall, prior to such attendance or participation, expressly agree to be subject to and bound by the confidentiality provisions of this Agreement or shall otherwise be bound by professional ethics rules to maintain such confidentiality.

Section 5.8 Maintenance of Properties; Insurance; Credit Ratings. The Issuer will, and will cause each of its Subsidiaries to, (a) keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear, casualty and condemnation excepted, (b) maintain with financially sound and reputable insurance companies which are not Affiliates of the Issuer (i) insurance with respect to its properties and business, and the properties and business of its Subsidiaries, against loss or damage of the kinds customarily insured against by companies in the same or similar businesses operating in the same or similar locations (including, in any event, flood insurance as described in the definition of Real Estate Documents) and (ii) all insurance required to be maintained pursuant to the Collateral Documents, and will, upon request of any Purchaser, furnish to each Purchaser at reasonable intervals a certificate of a Responsible Officer setting forth the nature and extent of all insurance maintained by the Issuer and its Subsidiaries in accordance with this Section, (c) at all times shall cause the applicable insurance provider to name the Collateral Agent as an additional insured on all liability policies of the Issuer and its Subsidiaries and as a loss payee (pursuant to a loss payee endorsement reasonably satisfactory to the Collateral Agent) on all casualty and property insurance policies of the Issuer and its Subsidiaries, in each case, other than any director and officer indemnification policies, workers' compensation policies and any policies that provide coverage for property that does not constitute Collateral, and (d) use commercially reasonable efforts at all times following the date that is 60 days after the Closing Date (or such longer period as the Required Purchasers may reasonably agree) to maintain ratings for the Notes issued hereunder and the corporate family credit of the Issuer and its Subsidiaries by both S&P and Moody's.

Section 5.9 Use of Proceeds; Margin Regulations.

(a) The Issuer will use the proceeds of all Initial Notes on the Closing Date (together with the proceeds of the First Lien Notes) (i) to refinance existing Indebtedness of the Note Parties under the Existing Credit Agreement and the Existing Priming Credit Agreement, (ii) to pay fees and expenses incurred in connection with the execution and delivery of this Agreement and the other Note Documents, the issuance and purchase of the Notes and the transactions contemplated to occur in connection therewith and (iii) for working capital and general corporate purposes of the Issuer and its Subsidiaries.

(b) The Issuer will use the proceeds of the Delayed Draw Notes for working capital and general corporate purposes of the Issuer and its Subsidiaries.

No part of the proceeds of any Note will be used, whether directly or indirectly, for any purpose that would violate any rule or regulation of the Board of Governors of the Federal Reserve System, including Regulation T, Regulation U or Regulation X.

Section 5.10 Casualty and Condemnation. The Issuer (a) will furnish to the Collateral Agent and the Purchasers prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding by any Governmental Authority for the taking of any material portion of the Collateral or any material interest therein under power of eminent domain or by condemnation or similar proceeding and (b) will ensure that the Net Cash Proceeds of any such Prepayment Event (whether in the form of insurance proceeds, condemnation awards or otherwise) are collected and applied in accordance with the applicable provisions of this Agreement and the Collateral Documents.

Section 5.11 Cash Management. The Issuer shall, and shall cause each Subsidiary Note Party to, maintain the cash management systems described below:

(a) Maintain all cash management and treasury business with a Permitted Third Party Bank, including, without limitation, all deposit accounts, disbursement accounts, investment accounts and lockbox accounts, other than Excluded Accounts (each such deposit account, disbursement account, investment account and lockbox account, other than any Excluded Account, a "Controlled Account").

(b) Each Controlled Account shall (i) be a cash collateral account, with all cash, checks and other similar items of payment in such account securing payment of the Obligations, and in which the Issuer and each of its Subsidiaries shall have granted a first priority Lien (subject to non-consensual Liens arising by operation of law and Section 7.2(b)) to the Collateral Agent, on behalf of the Secured Parties, and (ii) be subject to an Account Control Agreement.

(c) Subject to Section 5.11(e), deposit promptly, and in any event no later than five (5) Business Days after the date of receipt thereof, all cash, checks, drafts or other similar items of payment relating to or constituting payments made in respect of any and all accounts and other Collateral into Controlled Accounts, in each case except for cash, checks, drafts, other similar payment items and Cash Equivalents the aggregate value of which does not exceed $3,000,000 at any time.

(d) At any time after the occurrence and during the continuance of an Event of Default and at all times subject to the First Lien/Second Lien Intercreditor Agreement, at the request of the Required Purchasers, the Issuer will, and will cause each other Note Party to, cause all payments constituting proceeds of accounts or other Collateral to be directed into lockbox accounts under agreements in form and substance reasonably satisfactory to the Collateral Agent and the Required Purchasers.

(e) For each deposit account into which the Issuer or any Subsidiary Note Party receives payments from Federal/State Health Care Program Account Debtors (a "Government Receivables Account"), the Issuer or such Subsidiary Note Party shall enter into an agreement (a "Government Receivables Account Agreement") with the Permitted Third Party Bank at which such Government Receivables Account is located, in such form as may be reasonably approved by the Collateral Agent and the Required Purchasers, which agreement shall provide that all funds deposited into such Government Receivables Account shall be transferred promptly (but in any event within one (1) Business Day of deposit) to a Controlled Account of the Issuer or such Subsidiary Note Party. Neither the Issuer nor any Subsidiary Note Party shall terminate or modify a Government Receivables Account Agreement without the approval of the Required Purchasers, which approval (or non-approval, as the case may be) shall be communicated to the Issuer by the Purchasers within five (5) Business Days of any such request for approval and which approval shall not be unreasonably withheld, conditioned or delayed.

Section 5.12 Additional Subsidiaries and Collateral.

(a) In the event that, subsequent to the Closing Date, any Person (but specifically excluding any Specified Strategic Joint Venture) becomes a Domestic Subsidiary, whether pursuant to formation, acquisition or otherwise, (x) the Issuer shall promptly notify the Collateral Agent and the Purchasers thereof and (y) within 30 days (or such longer period as the Required Purchasers shall agree in writing) after such Person becomes a Domestic Subsidiary, the Issuer shall cause such Domestic Subsidiary (i) to become a new Guarantor and to grant Liens in favor of the Collateral Agent in all of its personal property that is not Excluded Property by executing and delivering to the Collateral Agent a supplement to the Guaranty and Security Agreement in form and substance reasonably satisfactory to the Collateral Agent and the Required Purchasers, executing and delivering a Copyright Security Agreement, Patent Security Agreement and Trademark Security Agreement, as applicable, and authorizing, delivering and filing such UCC financing statements or similar instruments necessary to perfect and maintain the Liens in favor of the Collateral Agent and granted under any of the Note Documents, (ii) in accordance with Section 5.13, to grant Liens in favor of the Collateral Agent in all fee ownership interests in Real Estate having a fair market value in excess of $2,500,000 as of the date such Person becomes a Domestic Subsidiary by executing and delivering to the Collateral Agent such Real Estate Documents necessary to perfect and maintain the Collateral Agent's security interest, and (iii) to deliver all such other customary and reasonable documentation (including, without limitation, certified organizational documents, resolutions, lien searches, title insurance policies, surveys, environmental reports and legal opinions) and to take all such other actions as such Subsidiary would have been required to deliver and take pursuant to Section 3.1 if such Subsidiary had been a Note Party on the Closing Date or that such Subsidiary would be required to deliver pursuant to Section 5.13 with respect to any Real Estate. In addition, within 30 days (or such longer period as the Required Purchasers shall permit in writing in their sole discretion) after the date any Person becomes a Domestic Subsidiary, the Issuer shall, or shall cause the applicable Note Party to (i) pledge all of the Capital Stock of such Domestic Subsidiary to the Collateral Agent as security for the Obligations by executing and delivering a supplement to the Guaranty and Security Agreement in form and substance reasonably satisfactory to the Collateral Agent and the Required Purchasers, and (ii) deliver the original certificates evidencing such pledged Capital Stock (to the extent that such Capital Stock is certificated) to the Collateral Agent, together with appropriate powers executed in blank, in each case, other than any such Capital Stock that constitutes Excluded Property.

(b) In the event that, subsequent to the Closing Date, any Person becomes a Foreign Subsidiary, whether pursuant to formation, acquisition or otherwise, (i) the Issuer shall promptly notify the Collateral Agent and the Purchasers thereof and (ii) to the extent such Foreign Subsidiary is owned directly by any Note Party, within 60 days after such Person becomes a Foreign Subsidiary (or such longer period as the Required Purchasers shall agree in writing), the Issuer shall, or shall cause the applicable Note Party to, (A) pledge not more than 65% of the issued and outstanding voting Capital Stock of such Foreign Subsidiary to the Collateral Agent as security for the Obligations pursuant to a pledge agreement in form and substance reasonably satisfactory to the Collateral Agent and the Required Purchasers, (B) deliver the original certificates evidencing such pledged Capital Stock (to the extent that such Capital Stock or portion thereof is certificated) to the Collateral Agent, together with appropriate powers executed in blank and (C) deliver all such other customary and reasonable documentation (including, without limitation, certified organizational documents, resolutions, lien searches and legal opinions) and to take all such other actions as the Collateral Agent or the Required Purchasers may reasonably request.

(c) The Issuer agrees that, following the delivery of any Collateral Documents required to be executed and delivered by this Section, the Collateral Agent shall have a valid and enforceable, first priority perfected Lien (subject to Specified Permitted Liens) on the property required to be pledged pursuant to clauses (a) and (b) of this Section (to the extent that such Lien can be perfected by execution, delivery and/or recording of the Collateral Documents or by filing UCC financing statements, or by taking actual possession of such Collateral), free and clear of all Liens other than Liens expressly permitted by Section 7.2. All actions to be taken pursuant to this Section shall be at the expense of the Issuer or the applicable Note Party, and shall be taken to the reasonable satisfaction of the Collateral Agent and the Required Purchasers.

Section 5.13 Additional Real Estate; Leased Locations.

(a) If any Note Party proposes to acquire after the Closing Date a fee ownership interest in Real Estate having a fair market value in excess of $2,500,000 as of the date of the acquisition thereof, it shall within ninety (90) days following such acquisition provide to the Collateral Agent and each Purchaser the Real Estate Documents with respect to such Real Estate. If, at any time, the fair market value of all Real Estate with respect to which the Note Parties hold a fee ownership interest and have not delivered Real Estate Documents is in excess of $5,000,000, the Note Parties shall within 90 days provide to the Collateral Agent and each Purchaser Real Estate Documents with respect to a sufficient portion of such Real Estate such that, after giving effect to the delivery of such Real Estate Documents, the fair market value of all Real Estate with respect to which the Note Parties hold a fee ownership interest and have not delivered Real Estate Documents does not exceed $5,000,000.

(b) If any Note Party proposes to lease any real property that will serve as such Note Party's chief executive office or the location at which such Note Party's books or records will be stored or located, it shall provide to the Collateral Agent and each Purchaser a copy of such lease and, within sixty (60) days following the effectiveness of such lease, a Collateral Access Agreement from the landlord of such leased property or the bailee with respect to any warehouse or other location where such books, records or Collateral will be stored or located; provided that if such Note Party is unable to deliver any such Collateral Access Agreement after using its commercially reasonable efforts to do so, the Required Purchasers shall waive the foregoing requirement in their reasonable discretion.

Section 5.14 Further Assurances. The Issuer will, and will cause each other Note Party to, execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, Mortgages and other documents), which may be required under any applicable law, or which the Collateral Agent or the Required Purchasers may reasonably request, to effectuate the transactions contemplated by the Note Documents or to grant, preserve, protect or perfect the Liens created by the Collateral Documents or the validity or priority of any such Lien, all at the expense of the Note Parties. The Issuer also agrees to provide to the Collateral Agent or any Purchaser, from time to time upon request, evidence reasonably satisfactory to the Collateral Agent or such Purchaser as to the perfection and priority of the Liens created or intended to be created by the Collateral Documents.

Section 5.15 Healthcare Matters.

(a) Without limiting the generality of any other covenant contained in this Agreement, and except as would not reasonably be expected to have a Material Adverse Effect, the Issuer will, and will cause each of its Subsidiaries to (i) conduct its operations in compliance with all applicable Healthcare Laws, (ii) maintain and comply with all Governmental Payor Arrangements, Third Party Payor Arrangements, Licenses, Company Accreditations and Company Reimbursement Approvals, (iii) timely file, or cause to be filed, all Company Regulatory Filings in accordance with all Requirements of Law, (iv) timely pay all amounts, Taxes, fees and assessments, if any, due and payable in connection with Company Regulatory Filings, (v) timely submit and implement all corrective action plans required to be prepared and submitted in response to any Health Care Audits, (vi) timely refund all overpayments (other than those appealed through the ordinary administrative processes of any applicable Governmental Authority) determined to exist by any Governmental Authority under any Healthcare Law or pursuant to any Governmental Payor Arrangement, (vii) timely repay any overpayment amounts owing under any finally resolved audit or investigation by any Third Party Payor, and (viii) process credit balances received from Third Party Payors in a manner consistent with the Issuer's internal policies and applicable Requirements of Law. The Issuer will, and will cause each of its Subsidiaries to, notify the Collateral Agent and each Purchaser promptly after the Issuer or any of its Subsidiaries becomes aware of any violation of Healthcare Laws by the Issuer or any of its Subsidiaries that would reasonably be expected to have a Material Adverse Effect.

(b) Without limiting the foregoing, the Issuer will, and will cause each of its Subsidiaries to, promptly furnish or cause to be furnished to the Collateral Agent and each Purchaser (x) copies of all reports of investigational/inspectional observations or reports issued to and received by the Issuer or any of its Subsidiaries and issued by any Governmental Authority, (y) copies of all correspondence as well as other documents received by the Issuer or any of its Subsidiaries from any Governmental Authority relating to or arising out of the conduct applicable to the business of Issuer or any of its Subsidiaries that asserts past or ongoing material non-compliance with applicable Healthcare Laws and (z) notice of any investigation or audit or similar proceeding by any Governmental Authority, except in each case where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

Notwithstanding anything to the contrary in any Note Document, neither the Issuer nor any of its Subsidiaries shall be required to furnish to the Collateral Agent or any Purchaser any protected health information or any patient-related information, to the extent such disclosure to the Collateral Agent or such Purchaser is prohibited by any Requirements of Law.

Section 5.16 Post-Closing Covenants. The Issuer will, and will cause each of its Subsidiaries to, as applicable, not later than the dates specified therefor on Schedule 5.16 (or such later dates as the Required Purchasers may agree in writing in their sole discretion), satisfy each of the requirements set forth on Schedule 5.16.

Section 5.17 **First Lien Credit Enhancements.** If the First Lien Collateral Agent or any "Secured Party" under the First Lien Note Documents, in its capacity as such, receives any additional guaranty or additional collateral agreement after the Closing Date, without limitation of any Event of Default that may arise as a result thereof, the Issuer shall, substantially concurrently with such receipt, use commercially reasonable efforts to cause the same to be granted to the Collateral Agent, for its own benefit and the benefit of the Secured Parties (subject to and without limitation of the terms of the First Lien/Second Lien Intercreditor Agreement).

Section 5.18 **First Lien Note Documents.** Notwithstanding anything in this Agreement to the contrary, if any amendment or modification to the First Lien Note Documents amends or modifies any representation and warranty, covenant (including any financial covenant), event of default or other term contained in the First Lien Note Documents (or any related definitions), in each case, in a manner that is more restrictive upon the Note Parties or if any amendment or modification to the First Lien Note Purchase Agreement or other First Lien Note Document adds an additional representation and warranty, covenant or event of default therein, the Issuer and the other Note Parties acknowledge and agree that this Agreement or the other Note Documents, as the case may be, shall be automatically amended or modified to effect similar amendments or modifications with respect to this Agreement or such other Note Documents, without the need for any further action or consent by the Issuer, the Note Parties, or any other party. In furtherance of the foregoing, the Issuer and the other Note Parties permit the Collateral Agent and the Purchasers to document each such similar amendment or modification to this Agreement or such other Note Documents or insert a corresponding new representation and warranty, covenant, event of default or other provision in this Agreement or such other Note Documents without any need for any further action or consent by the Issuer, the other Note Parties or any other party.

Section 5.19 **Corporate Compliance and Quality Management Program.** The Issuer will, and will cause each of its Subsidiaries to, maintain a corporate compliance and quality management program that is reasonably designed to ensure compliance with applicable Healthcare Laws, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. For the avoidance of doubt, the corporate compliance and quality management program will include policies and procedures relating to internal claims auditing and auditing for compliance to Governmental Authority requirements for the operation of a compounding pharmacy.

ARTICLE VI

FINANCIAL COVENANT

The Issuer covenants and agrees that so long as any Purchaser has a Commitment or Delayed Draw Commitment hereunder or any Obligation remains unpaid or outstanding (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made):

(a) The Issuer shall not permit the Consolidated Covenant Testing Net Leverage Ratio as of the last day of the most recently ended Fiscal Quarter for which financial statements have been delivered (or were required to be delivered) pursuant to Section 5.1(a) or 5.1(b), as applicable, for the period of four (4) consecutive Fiscal Quarters ending on such date, to be greater than the ratio set forth below opposite such Fiscal Quarter:

Fiscal Quarter Ending	Consolidated Covenant Testing Net Leverage Ratio
September 30, 2017	9.00:1.00
December 31, 2017 and each Fiscal Quarter thereafter	8.00:1.00

ARTICLE VII

NEGATIVE COVENANTS

The Issuer covenants and agrees that so long as any Purchaser has a Commitment or Delayed Draw Commitment hereunder or any Obligation remains outstanding (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made):

Section 7.1 Indebtedness and Disqualified Capital Stock.

(a) The Issuer will not, and will not permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Indebtedness, except:

(i) Indebtedness created pursuant to the Note Documents;

(ii) Indebtedness of the Issuer and its Subsidiaries existing on the Closing Date and set forth on Schedule 7.1 and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof immediately prior to giving effect to such extension, renewal or replacement (except in respect of costs and expenses in connection therewith or any interest that is paid-in-kind and capitalized to the principal amount thereof in connection with such extension, renewal or replacement) or shorten the maturity or the Weighted Average Life to Maturity thereof;

(iii) Indebtedness of the Issuer or any of its Subsidiaries incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations, and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof (provided that such Indebtedness is incurred prior to or within 90 days after such acquisition or the completion of such construction or improvements), and extensions, renewals or replacements of any such Indebtedness that do not increase the outstanding principal amount thereof immediately prior to giving effect to such extension, renewal or replacement (except in respect of costs and expenses in connection therewith or any interest that is paid-in-kind and capitalized to the principal amount thereof in connection with such extension, renewal or replacement) or shorten the maturity or the Weighted Average Life to Maturity thereof; provided, that the aggregate principal amount of Indebtedness outstanding under this clause (iii) at any time (including any of such Indebtedness which is set forth on Schedule 7.1) does not exceed the greater of (A) $12,500,000 and (B) 1.50% of Consolidated Total Assets;

(iv) (A) intercompany Indebtedness between or among the Issuer and any Subsidiary Note Party and (B) intercompany Indebtedness between or among the Issuer and any Subsidiary that is not a Note Party permitted by Section 7.4(d);

(v) (A) Guarantees by the Issuer of Indebtedness of any Subsidiary Note Party and by any Subsidiary Note Party of Indebtedness of the Issuer or any other Subsidiary Note Party and (B) Guarantees by the Issuer of Indebtedness of any Subsidiary that is not a Note Party and by any Subsidiary of Indebtedness of the Issuer or any other Subsidiary that is not a Note Party permitted by Section 7.4(d);

(vi) Indebtedness in respect of performance, bid, surety, indemnity, appeal bonds, completion guarantees and other obligations of like nature and guarantees and/or obligations as an account party in respect of the face amount of letters of credit in respect thereof, in each case securing obligations not constituting Indebtedness for borrowed money (including workers' compensation claims, environmental remediation and other environmental matters and obligations in connection with self-insurance or similar requirements) provided in the ordinary course of business;

(vii) Indebtedness arising from the endorsement of instruments in the ordinary course of business;

(viii) Indebtedness consisting of contingent liabilities in respect of any indemnification, working capital adjustment, purchase price adjustment, non-compete, consulting, deferred compensation, earn-out obligations, contingent consideration, contributions, and similar obligations, incurred in connection with any Investment permitted under Section 7.4 or any disposition permitted under Section 7.6; provided that, with respect to any earn-out or other deferred or contingent purchase consideration in respect of a Permitted Acquisition, (x) such earn-out or other deferred or contingent purchase consideration shall be subordinated in right of payment to the Obligations and the First Lien Obligations on terms acceptable to the Required Purchasers and the Required Purchasers (as defined in the First Lien Note Purchase Agreement), (y) such earn-out or other deferred or contingent purchase consideration such shall be unsecured and (z) there shall be no obligors (including guarantors) in respect of such earn-out or other deferred or contingent purchase consideration other than (I) in the case of an Acquisition of the type described in clause (b) of the definition of Acquisition, the Person acquiring the assets of the applicable Target, (II) in the case of an Acquisition of the type described in clause (a) of the definition of Acquisition, the applicable Target (and for the avoidance of doubt, no subsidiaries of the applicable Target shall be obligors) and (III) in each case, any parent company of the Person acquiring such asset or Target, which parent company is a newly-formed holding company that holds no material assets, and has no material liabilities, other than equity interests in the Person acquiring such assets or Target;

(ix) Indebtedness consisting of the financing of insurance premiums required by this Agreement or otherwise incurred in the ordinary course of business;

(x) cash management obligations and other Indebtedness in respect of netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and other cash management and similar arrangements, in each case, in the ordinary course of business and any Guarantees thereof;

(xi) Hedging Obligations not prohibited by Section 7.10;

(xii) Indebtedness of the Issuer or any of its Subsidiaries owed to any supplier or vendor of Inventory incurred to finance the acquisition of Inventory from such supplier or vendor, including the ABDC Obligations; provided that, immediately after giving effect to any incurrence of Indebtedness under this clause (xii) on any date of determination, the aggregate principal amount of Indebtedness outstanding under this clause (xii) does not exceed $20,000,000 for any period of more than twenty (20) consecutive days after a Responsible Officer of the Issuer becomes aware of such excess outstanding amount;

(xiii) (A) unsecured Indebtedness evidenced by the Senior Notes outstanding on the Closing Date and (B) Permitted Refinancing Indebtedness in respect thereof;

(xiv) obligations arising under indemnity agreements or other arrangements with title insurers to cause such title insurers to issue title policies in the ordinary course of business;

(xv) Indebtedness representing deferred compensation or reimbursable expenses owed to employees of the Issuer or any of its Subsidiaries incurred in the ordinary course of business;

(xvi) Guarantees by the Issuer in the ordinary course of business of any obligations of any Subsidiary Note Party under an operating lease to which such Subsidiary Note Party is a party;

(xvii) other unsecured Indebtedness (other than Indebtedness for borrowed money); provided that the aggregate principal amount of Indebtedness outstanding under this clause (xvii) at any time does not exceed the greater of (A) $5,000,000 and (B) 1.00% of Consolidated Total Assets;

(xviii) the First Lien Obligations to the extent all such obligations constitute "First Lien Obligations" under the First Lien/Second Lien Intercreditor Agreement;

(xix) Indebtedness in respect of stand-by letters of credit; provided that the aggregate principal amount of Indebtedness outstanding under this clause (xix) shall not exceed $7,200,000; and

(xx) Permitted Seller Financing in respect of any Permitted Acquisition.

For purposes of determining compliance with this Section 7.1(a), in the event that any item of Indebtedness meets the criteria of more than one of the categories described in clauses (a)(i) through (a)(xvii), the Issuer and its Subsidiaries shall be permitted to incur any such Indebtedness in any manner that complies with this Section 7.1(a) and may rely at the time of incurrence upon more than one of the categories described above; provided that the ABDC Obligations shall be incurred and shall remain outstanding solely under clause (a)(xii) above.

(b) The Issuer will not, and will not permit any Subsidiary to, issue or permit to exist any Disqualified Capital Stock of any such Person.

Section 7.2 Liens. The Issuer will not, and will not permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Lien on any of its assets or property now owned or hereafter acquired, except:

(a) Liens securing the Obligations;

(b) Liens created under any First Lien Note Document and securing the First Lien Obligations permitted hereunder, so long as such Liens are securing the First Lien Obligations in accordance with, and are subject to, the terms of the First Lien/Second Lien Intercreditor Agreement;

(c) Permitted Encumbrances;

(d) Liens on any property or asset of the Issuer or any of its Subsidiaries existing on the date hereof and set forth on Schedule 7.2; provided that such Liens shall not apply to any other property or asset of the Issuer or any Subsidiary;

(e) Liens securing Indebtedness incurred pursuant to Section 7.1(a)(iii); provided that (i) such Lien attaches to such asset concurrently or within ninety (90) days after the acquisition or the completion of the construction or improvements thereof, (ii) such Lien granted is limited to the specific fixed assets acquired, constructed or improved and the proceeds thereof and (iii) the aggregate principal amount of Indebtedness initially secured by such Lien is not more than the acquisition cost of the specific fixed assets on which such Lien is granted;

(f) Liens (other than the ABDC Lien) securing Indebtedness incurred pursuant to Section 7.1(a)(xii); provided that (i) such Lien granted is limited to the specific Inventory acquired and (ii) the aggregate principal amount of Indebtedness initially secured by such Lien is not more than the acquisition cost of the Inventory on which such Lien is granted; provided, further, that if, at any time after the Closing Date, the Issuer or any of its Subsidiaries grants such a Lien to a supplier or vendor and the aggregate principal amount of Indebtedness outstanding that is owed to such supplier or vendor and its Affiliates is in excess of $10,000,000, the Issuer or such Subsidiary shall use commercially reasonable efforts to enter into an intercreditor agreement (which shall contain terms and conditions that are substantially consistent with, but no less favorable to the Purchasers than, the ABDC Intercreditor Agreement) pursuant to which the Lien securing such Indebtedness owed to such supplier or vendor (and its affiliates) shall be subordinated to the Liens securing the Obligations;

(g) any Lien existing on any fixed assets prior to the acquisition thereof by the Issuer or any of its Subsidiaries or existing on any fixed assets of any Person that becomes a Subsidiary; provided that (i) such Lien was not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, (ii) such Lien does not apply to any other property of the Issuer or any of its Subsidiaries, and (iii) such Lien secures only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary;

(h) extensions, renewals, or replacements of any Lien referred to in clauses (b) through (g) of this Section; provided that the principal amount of the Indebtedness secured thereby is not increased (except in respect of costs and expenses in connection therewith or any interest that is paid-in-kind and capitalized to the principal amount thereof in connection with such extension, renewal or replacement) and that any such extension, renewal or replacement is limited to the assets originally encumbered thereby;

(i) the ABDC Lien so long as such Liens are subordinated to the Liens securing the Obligations pursuant to the terms of the ABDC Intercreditor Agreement; and

(j) Liens on cash collateral for letters of credit permitted pursuant to Section 7.1(a)(xix); provided that the amount of such cash collateral shall not exceed 105% of the face amount of such letters of credit.

Section 7.3 Fundamental Changes.

(a) The Issuer will not, and will not permit any of its Subsidiaries to, merge into or consolidate into any other Person, or permit any other Person to merge into or consolidate with it, or sell, lease, transfer or otherwise dispose of (in a single transaction or a series of transactions) all or substantially all of its assets (in each case, whether now owned or hereafter acquired) (except as permitted by Section 7.6) or all or substantially all of the Capital Stock of any of its Subsidiaries (in each case, whether now owned or hereafter acquired) or liquidate or dissolve; provided that if, at the time thereof and immediately after giving effect thereto, no Event of Default shall have occurred and be continuing, (i) the Issuer or any Subsidiary may merge with a Person if the Issuer (or such Subsidiary if the Issuer is not a party to such merger) is the surviving Person, (ii) any Subsidiary may merge into another Subsidiary, provided that if any party to such merger is a Subsidiary Note Party, the Subsidiary Note Party shall be the surviving Person, (iii) any Subsidiary may sell, transfer, lease or otherwise dispose of all or substantially all of its assets to the Issuer or to a Subsidiary Note Party, and (iv) any Subsidiary may liquidate or dissolve if the Issuer determines in good faith that such liquidation or dissolution is in the best interests of the Issuer.

(b) The Issuer will not, and will not permit any of its Subsidiaries to, engage in any business other than a Permitted Business.

Section 7.4 Investments, Loans. The Issuer will not, and will not permit any of its Subsidiaries to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a wholly owned Subsidiary prior to such merger) any Capital Stock, evidence of Indebtedness or other securities (including any option, warrant, or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or make any Acquisition (all of the foregoing being collectively called "Investments"), or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person that constitute a business unit, or create or form any Subsidiary, except:

(a) Investments existing on the date hereof and set forth on Schedule 7.4 (including Investments in Subsidiaries that are Note Parties);

(b) Investments in cash and Cash Equivalents;

(c) Guarantees by the Issuer and its Subsidiaries constituting Indebtedness permitted by Section 7.1;

(d) Investments made by the Issuer in or to any Subsidiary and by any Subsidiary to the Issuer or in or to another Subsidiary; provided, that (i) in the case of any Investment in the form of Indebtedness owed by a Note Party to a Subsidiary that is not a Note Party, such Indebtedness (and any related Guarantee provided by any Note Party) shall be subordinated to the Obligations on terms and pursuant to documentation in form and substance reasonably satisfactory to the Required Purchasers and (ii) the aggregate principal amount of all Investments made by a Note Party to a Subsidiary that is not a Note Party shall not exceed the greater of (A) $10,000,000 and (B) 1.50% of Consolidated Total Assets (net of cash actually received by the Issuer or any such Subsidiary in respect of any such Investments and determined without regard to any write-downs or write-offs of any investments, loans or advances in connection therewith);

(e) loans or advances to employees, officers or directors of the Issuer or any of its Subsidiaries in the ordinary course of business for travel, entertainment, relocation and related expenses; provided that the aggregate amount of all such loans and advances shall not exceed $2,000,000 at any time outstanding;

(f) Hedging Transactions not prohibited by Section 7.10;

(g) Investments received in satisfaction or partial satisfaction from financially troubled debtors or in connection with the bankruptcy or reorganization of suppliers or customers;

(h) Investments consisting of deposits, expense prepayments, accounts receivable arising, trade debt granted and other credits extended to suppliers, distributors or marketers in the ordinary course of business;

(i) Investments received as the non-cash portion of consideration received for dispositions not prohibited by Section 7.6;

(j) other Investments (other than Investments in any Subsidiary that is not a Note Party) which do not exceed $8,000,000 in the aggregate over the term of this Agreement; and

(k) Permitted Acquisitions.

Notwithstanding the foregoing, in no event shall the Issuer or any of its Subsidiaries make any investment in any Subsidiary formed for the purpose of holding assets of the Issuer and its Subsidiaries constituting the Issuer's and its Subsidiaries' PBM line of business.

For purposes of determining the amount of any Investment outstanding for purposes of this Section 7.4, such amount shall be deemed to be the cost of such Investment when made, purchased or acquired, net of any amount representing return of (but not return on) such Investment and without regard to any forgiveness of Indebtedness.

Section 7.5 Restricted Payments. The Issuer will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except:

(a) dividends payable by the Issuer solely in interests of any class of its common equity;

(b) Restricted Payments made by any Subsidiary to the Issuer or to another Subsidiary; provided that (i) if such Restricted Payment is made by a Subsidiary that is not wholly owned by the Issuer or another wholly owned Subsidiary of the Issuer, such Restricted Payment shall be made on at least a pro rata basis with any other shareholders of such non-wholly owned Subsidiary and (ii) other than any Restricted Payments consisting solely of required tax payments arising by virtue of any Subsidiary Note Party being a pass-through entity or being a member of a consolidated or other similar group for income tax purposes, if such Restricted Payment is made by a Subsidiary Note Party to a Subsidiary that is not a Note Party, no Default or Event of Default has occurred and is continuing before and immediately after giving effect to such payment;

(c) payments made by the Issuer under the ABDC Prime Vendor Agreement, to the extent permitted by the ABDC Intercreditor Agreement;

(d) scheduled payments of principal, interest and other amounts with respect to Subordinated Debt to the extent permitted by the terms of such Indebtedness and by the terms of any subordination agreement applicable thereto;

(e) Restricted Payments in the form of a non-cash repurchase of Capital Stock of the Issuer that is deemed to occur upon the exercise of stock options, warrants or other convertible or exchangeable securities to the extent that such Capital Stock represents a portion of the exercise price of those securities, in each case, pursuant to any equity-based compensation or incentive plan of the Issuer;

(f) dividends made in cash in lieu of the issuance of fractional shares of Capital Stock of the Issuer in connection with the exercise of warrants, options or other securities convertible into, or exchangeable for, Capital Stock of the Issuer pursuant to any equity-based compensation or incentive plan of the Issuer; and

(g) cash dividends, distributions, and share repurchases by the Issuer in respect of the Issuer's common Capital Stock so long as: (i) the aggregate amount of such cash dividends, distributions, and share repurchases does not exceed the Available Amount, (ii) after giving pro forma effect to such cash dividend, distribution, or share repurchase, the Consolidated Total Net Leverage Ratio is less than or equal to 2.50 to 1.00, calculated as of the last day of the most recently ended Fiscal Quarter for which financial statements are required to have been delivered pursuant to Section 5.1(b), and (iii) at the time of such cash dividend, distribution, or share repurchase and after giving effect thereto, no Default or Event of Default exists.

Section 7.6 **Sale of Assets.** The Issuer will not, and will not permit any of its Subsidiaries to, convey, sell, lease, assign, transfer or otherwise dispose of any of its assets, business or property or, in the case of any Subsidiary, any shares of such Subsidiary's Capital Stock, in each case whether now owned or hereafter acquired, to any Person other than the Issuer or a Subsidiary Note Party (or to qualify directors if required by applicable law), except:

(a) the sale or other disposition of damaged, scrap, obsolete or worn out property disposed of in the ordinary course of business;

(b) the sale of inventory in the ordinary course of business;

(c) the sale or other disposition of cash and Cash Equivalents in the ordinary course of business;

(d) the issuance of Capital Stock by any Subsidiary of the Issuer issued to the Issuer or any Subsidiary Note Party so long as such issuance does not result in a Change in Control;

(e) the occurrence of any casualty event, condemnation, eminent domain or other similar proceeding with respect to any assets or property of the Issuer or any of its Subsidiaries (provided that the Net Cash Proceeds thereof are used to prepay the Notes in accordance with Section 2.9(a)); and

(f) any other sale or disposition of assets not otherwise described in this Section 7.6 not to exceed $1,000,000 in the aggregate over the term of this Agreement, so long as (i) at least 75% of the aggregate consideration received in respect of such sale or disposition is received in cash or Cash Equivalents, (ii) such sales and dispositions shall be for fair market value (provided that the Net Cash Proceeds thereof are used to prepay the Notes in accordance with Section 2.9(a)) and (iii) such sales and dispositions are made to a Person that is not an Affiliate of the Issuer.

Section 7.7 **Transactions with Affiliates.** The Issuer will not, and will not permit any of its Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except:

(a) in the ordinary course of business at prices and on terms and conditions not less favorable to the Issuer or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties;

(b) transactions (i) between or among the Issuer and any Subsidiary Note Party not involving any other Affiliates (other than any other Subsidiary Note Party) or (ii) between or among the Issuer or any Subsidiary Note Party and any Subsidiary that is not a Note Party that are not otherwise prohibited by this Agreement (in each case, subject to the terms and conditions therefor, if any);

(c) any Restricted Payment permitted by Section 7.5;

(d) transactions in respect of compensation or employment, separation and severance of officers, directors or employees and the establishment and maintenance of benefit programs or arrangements with employees, officers or directors, including vacation plans, health and life insurance plans, deferred compensation plans and retirement or savings plans and similar plans or equity incentive or equity option plans, in each case, in the ordinary course of business; and

(e) any transaction set forth on Schedule 7.7 as of the Closing Date.

Section 7.8 Restrictive Agreements. The Issuer will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement that prohibits, restricts or imposes any condition upon (a) the ability of the Issuer or any of its Subsidiaries to create, incur or permit any Lien upon any of its assets or properties, whether now owned or hereafter acquired, or (b) the ability of any of its Subsidiaries to pay dividends or other distributions with respect to its Capital Stock, to make or repay loans or advances to the Issuer or any other Subsidiary thereof, to Guarantee Indebtedness of the Issuer or any other Subsidiary thereof or to transfer any of its property or assets to the Issuer or any other Subsidiary thereof; provided that (i) the foregoing shall not apply to restrictions or conditions imposed by law or by this Agreement, any other Note Document, the First Lien Note Purchase Agreement or any other First Lien Note Documents, (ii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided such restrictions and conditions apply only to the Subsidiary that is sold and such sale is permitted hereunder, (iii) clause (a) shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions and conditions apply only to the property or assets securing such Indebtedness, (iv) clause (a) shall not apply to customary provisions in leases, licenses, licensing agreements and other contracts restricting the assignment thereof and (v) the foregoing shall not apply to any restrictions and conditions imposed on any Foreign Subsidiary by the terms of any Indebtedness of such Foreign Subsidiary permitted to be incurred hereunder, and (vi) the foregoing shall not apply to any Specified Strategic Joint Venture.

Section 7.9 Sale and Leaseback Transactions. The Issuer will not, and will not permit any of its Subsidiaries to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereinafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred.

Section 7.10 Hedging Transactions. The Issuer will not, and will not permit any of its Subsidiaries to, enter into any Hedging Transaction, other than Hedging Transactions entered into in the ordinary course of business to hedge or mitigate risks to which the Issuer or any of its Subsidiaries is exposed in the conduct of its business or the management of its liabilities. Solely for the avoidance of doubt, the Issuer acknowledges that a Hedging Transaction entered into for speculative purposes or of a speculative nature (which shall be deemed to include any Hedging Transaction under which the Issuer or any of its Subsidiaries is or may become obliged to make any payment (a) in connection with the purchase by any third party of any Capital Stock or any Indebtedness or (b) as a result of changes in the market value of any Capital Stock or any Indebtedness) is not a Hedging Transaction entered into in the ordinary course of business to hedge or mitigate risks.

Section 7.11 **Amendment to Material Documents.** The Issuer will not, and will not permit any of its Subsidiaries to, amend, modify or waive any of its rights under (a) its certificate of incorporation, bylaws or other organizational documents in any manner that would reasonably be expected to be materially adverse to the Purchasers (it being agreed that any such amendment or modification effected in accordance with Section 5.2(x) or in order to consummate a transaction permitted by Section 7.3 shall not be deemed to be materially adverse to the Purchasers), (b) any Material Agreements (other than to the extent expressly covered by clauses (c) and (d) below) in any manner that would reasonably be expected to be adverse to the Purchasers in any material respect, (c) any First Lien Note Document, except as permitted by the First Lien/Second Lien Intercreditor Agreement or (d) the Senior Notes Indenture or the Senior Notes (or any documentation governing any Permitted Refinancing Indebtedness) if, after giving effect to any such amendment, modification or waiver, the Senior Notes Indenture and the Senior Notes (or such documentation governing any Permitted Refinancing Indebtedness) as so amended, modified or waived would not meet each of the requirements set forth in the proviso to the definition of "Permitted Refinancing Indebtedness".

Section 7.12 **Accounting Changes.** The Issuer will not, and will not permit any of its Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required by GAAP, or change the Fiscal Year of the Issuer or of any of its Subsidiaries, except to change the Fiscal Year of a Subsidiary to conform its Fiscal Year to that of the Issuer.

Section 7.13 **Compliance with Anti-Terrorism and Anti-Corruption Laws and Sanctions.** No Note Party shall, and no Note Party shall permit any of its Affiliates to: (a) (i) violate any Anti-Terrorism Laws or Anti-Corruption Laws, (ii) engage in any transaction, investment, undertaking or activity that conceals the identity, source or destination of the proceeds from any category of prohibited offenses designated by the Organization for Economic Co-operation and Development's Financial Action Task Force on Money Laundering, (iii) become (including by virtue of being owned or controlled by a Blocked Person), own or control a Blocked Person or any other Sanctioned Person or (iv) knowingly permit any of their respective Affiliates to violate these laws or engage in these actions; (b) use, directly or indirectly, the proceeds of the Notes, or lend, contribute or otherwise make available such proceeds to any Person, (x) to fund any activities or business of or with any Sanctioned Person or Sanctioned Country, or (y) in any other manner that would result in a violation of Sanctions or any Anti-Terrorism Laws or Anti-Corruption Laws by any Person (including any Person participating in the Notes, whether as underwriter, advisor, investor, or otherwise); or (c) (i) deal in, or otherwise engage in any transaction related to, any property or interests in property blocked pursuant to any Anti-Terrorism Law or Sanctions, or (ii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempt to violate, any of the prohibitions set forth in any Anti-Terrorism Law or Sanctions or (iii) knowingly permit any of their respective Affiliates to do any of the foregoing.

Section 7.14 **Health Care Matters.** Without limiting or being limited by any other provision of any Note Document, and except as would not reasonably be expected to have a Material Adverse Effect, the Issuer will not, and will not permit any of its Subsidiaries to, (i) fail to maintain in effect all Licenses, Company Accreditations and Company Reimbursement Approvals, 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 License, Company Accreditation or Company Reimbursement Approval or any Healthcare Laws, or (b) cause the Issuer or any of its Subsidiaries not to be in compliance with any Healthcare Laws.

Section 7.15 **ERISA.** No Note Party shall, or shall cause or permit any ERISA Affiliate to, cause or permit to occur an ERISA Event to the extent such ERISA Event would reasonably be expected to have a Material Adverse Effect.

Section 7.16 **Payments in Respect of Senior Notes.** Except for the refinancing of the Senior Notes with the proceeds of Permitted Refinancing Indebtedness, the Issuer will not, and will not permit any of its Subsidiaries to, make any optional payment or optional prepayment of principal of, premium, if any, interest, fees or other amounts on or with respect to, or any redemption, purchase, retirement, defeasance, sinking fund or similar payment or claim for rescission with respect to, the Senior Notes (or any Permitted Refinancing Indebtedness).

Section 7.17 **Anti-Layering.** Notwithstanding anything herein to the contrary, no Note Party shall, and no Note Party shall permit any of its Subsidiaries to, create or incur any Indebtedness which is secured by a Lien on the Collateral, which Lien is subordinated in right of priority to the Lien securing the First Lien Obligations, unless the Lien securing such Indebtedness is also subordinated in right of priority in the same manner and to the same extent, to the Lien securing the Obligations.

Section 7.18 **First Lien Obligations.** No Note Party shall, and no Note Party shall permit any Subsidiary or Affiliate of such Note Party to, hold any First Lien Obligations.

ARTICLE VIII

EVENTS OF DEFAULT

Section 8.1 **Events of Default.** If any of the following events (each, an "Event of Default") shall occur:

(a) the Issuer shall fail to pay any principal of any Note, when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment or otherwise; or

(b) the Issuer shall fail to pay any interest on any Note or any fee, Prepayment Premium, premium or any other amount (other than an amount payable under clause (a) of this Section) payable under this Agreement or any other Note Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) Business Days; or

(c) any representation or warranty made or deemed made by or on behalf of the Issuer or any of its Subsidiaries in or in connection with this Agreement or any other Note Document (including the Schedules attached hereto and thereto), or in any amendments or modifications hereof or waivers hereunder, or in any certificate, report, financial statement or other document submitted to the Collateral Agent or the Purchasers by any Note Party or any representative of any Note Party pursuant to or in connection with this Agreement or any other Note Document shall prove to be incorrect in any material respect (other than any representation or warranty that is expressly qualified by a Material Adverse Effect or other materiality, in which case such representation or warranty shall prove to be incorrect in any respect) when made or deemed made; or

(d) the Issuer shall fail to observe or perform any covenant or agreement contained in (i) Section 5.1 and such failure shall remain unremedied for five (5) days or (ii) Section 5.2, 5.3 (with respect to the Issuer's legal existence), 5.7, 5.9, 5.11, 5.16, Article VI or Article VII; or

(e) (i) any Note Party shall fail to observe or perform any covenant or agreement contained in this Agreement (other than those referred to in clauses (a), (b) and (d) of this Section) or any other Note Document, and such failure shall remain unremedied for 30 days after the earlier of (A) any Responsible Officer of the Issuer becomes aware of such failure, or (B) written notice thereof shall have been given to the Issuer by the Collateral Agent or any Purchaser or (ii) any "Event of Default" as defined in any Note Document shall have occurred and be continuing; or

(f) (i) the Issuer or any of its Subsidiaries (whether as primary obligor or as guarantor or other surety) shall fail to pay any principal of, or premium or interest on, or any other amount owed under the ABDC Obligations, any Material Indebtedness (other than any Hedging Obligations) or any Material Permitted Seller Financing that is outstanding, in each case, when and as the same shall become due and payable (whether at scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument evidencing or governing the ABDC Obligations, such Material Indebtedness or such Material Permitted Seller Financing, as applicable; or any other event shall occur or condition shall exist under any agreement or instrument relating to the ABDC Obligations (including, without limitation, any default under the ABDC Prime Vendor Agreement), any Material Indebtedness or any Material Permitted Seller Financing and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or permit the acceleration of, the maturity of the ABDC Obligations, such Material Indebtedness or such Material Permitted Seller Financing; or the ABDC Obligations, any Material Indebtedness or any Material Permitted Seller Financing shall be declared to be due and payable, or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), purchased or defeased, or any offer to prepay, redeem, purchase or defease the ABDC Obligations, such Indebtedness or such Material Permitted Seller Financing shall be required to be made, in each case prior to the stated maturity thereof or (ii) there occurs under any Hedging Transaction an Early Termination Date (as defined in such Hedging Transaction) resulting from (A) any event of default under such Hedging Transaction as to which the Issuer or any of its Subsidiaries is the Defaulting Party (as defined in such Hedging Transaction) and the Hedge Termination Value owed by the Issuer or such Subsidiary as a result thereof is greater than $12,500,000 or (B) any Termination Event (as so defined) under such Hedging Transaction as to which the Issuer or any Subsidiary is an Affected Party (as so defined) and the Hedge Termination Value owed by the Issuer or such Subsidiary as a result thereof is greater than $12,500,000 and is not paid; or

(g) the Issuer or any of its Subsidiaries shall (i) commence a voluntary case or other proceeding or file any petition seeking liquidation, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a custodian, trustee, receiver, liquidator or other similar official of it or any substantial part of its property, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) of this Section, (iii) apply for or consent to the appointment of a custodian, trustee, receiver, liquidator or other similar official for the Issuer or any such Subsidiary or for a substantial part of its assets, (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, or (vi) take any action for the purpose of effecting any of the foregoing; or

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Issuer or any of its Subsidiaries or its debts, or any substantial part of its assets, under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) the appointment of a custodian, trustee, receiver, liquidator or other similar official for the Issuer or any of its Subsidiaries or for a substantial part of its assets, and in any such case, such proceeding or petition shall remain undismissed for a period of 60 days or an order or decree approving or ordering any of the foregoing shall be entered; or

(i) the Issuer or any of its Subsidiaries shall become unable to generally pay, shall admit in writing its inability to generally pay, or shall fail to pay, its debts as they become due; or

(j) (i) an ERISA Event shall have occurred that, when taken together with other ERISA Events that have occurred, would reasonably be expected to result in liability to the Issuer and its Subsidiaries in an aggregate amount exceeding $12,500,000, (ii) there is or arises an Unfunded Pension Liability (not taking into account Plans with negative Unfunded Pension Liability) in an aggregate amount exceeding $12,500,000, or (iii) there is or arises any potential Withdrawal Liability in an aggregate amount exceeding $12,500,000; or

(k) any final non-consensual judgment or order for the payment of money (to the extent not covered by insurance as to which the insurer has been notified of such judgment and has not denied coverage in writing) in excess of $12,500,000 individually (or, together with any related non-consensual judgment or order, in the aggregate) shall be rendered against the Issuer or any of its Subsidiaries, and either (i) enforcement proceedings shall have been commenced by any creditor upon such non-consensual judgment or order or (ii) such non-consensual judgment or order remains unvacated, unbounded or unstayed for a period of 30 consecutive days; or

(l) any final non-monetary judgment or order shall be rendered against the Issuer or any of its Subsidiaries that would reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, and there shall be a period of 30 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(m) a Change in Control shall occur or exist; or

(n) all or any material portion or provision of the Guaranty and Security Agreement, the ABDC Intercreditor Agreement, the First Lien/Second Lien Intercreditor Agreement, or any other Note Document shall for any reason (other than (x) solely as a result of any action or inaction on the part of the Collateral Agent or any Purchaser, or (y) in accordance with its terms) cease to be valid and binding on, or enforceable against, any Note Party, or any Note Party shall so state in writing, or any Note Party shall seek to terminate its obligation under the Guaranty and Security Agreement, the ABDC Intercreditor Agreement, the First Lien/Second Lien Intercreditor Agreement, or any other Note Document (other than the release of any guaranty or collateral in accordance with Section 9.11 or any other release in accordance with the terms of such document or otherwise in accordance with the terms hereof); or

(o) any Lien purported to be created under any Collateral Document shall fail or cease to be, or shall be asserted by any Note Party not to be, a valid and perfected, and, except for Specified Permitted Liens, first priority Lien on any Collateral (other than, in each case, solely as a result of any action or inaction on the part of any Purchaser); or

(p) (i) the commencement by any Governmental Authority of any proceeding or hearing relating to the criminal and/or civil violation of any Governmental Payor Arrangement or License of the Issuer or any of its Subsidiaries, to the extent such proceeding or hearing would reasonably be expected to have a Material Adverse Effect; (ii) there shall have occurred the involuntary termination of, or the receipt by the Issuer or any of its Subsidiaries of notice of the involuntary 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 involuntary termination of, any Governmental Payor Arrangement, Third Party Payor Arrangement, License, or Company Accreditation of the Issuer or any of its Subsidiaries, except for involuntary terminations that would not be expected to have a Material Adverse Effect; or (iii) the imposition of any overpayment in an amount in excess of $5,000,000 by any Governmental Authority or Third Party Payor under any Healthcare Law or pursuant to any Governmental Payor Arrangement or Third Party Payor Arrangement, as applicable; or

(q) the Issuer or any of its Subsidiaries or any of their respective directors or officers is criminally convicted under any law or Requirement of Law that would reasonably be expected to lead to (i) a forfeiture of a portion of Collateral or (ii) exclusion from participation in any federal or state health care program, including Medicare or Medicaid, and such exclusion would reasonably be expected to result in a Material Adverse Effect;

then, and in every such event (other than an event with respect to the Issuer described in clause (g) or (h) of this Section) and at any time thereafter during the continuance of such event, the Required Purchasers may, by notice to the Issuer, take any or all of the following actions, at the same or different times: (i) terminate the Commitments and the Delayed Draw Commitments, whereupon the Commitment and Delayed Draw Commitment of each Purchaser shall terminate immediately, (ii) declare the principal of and any accrued interest on the Notes, and all other Obligations owing hereunder, to be, whereupon the same shall become, due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Issuer, (iii) exercise all remedies contained in any other Note Document, and (iv) exercise any other remedies available at law or in equity; provided that, if an Event of Default specified in either clause (g) or (h) shall occur, the Commitments and the Delayed Draw Commitments shall automatically terminate and the principal of the Notes then outstanding, together with accrued interest thereon, and all fees and all other Obligations shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Issuer.

If the Notes are accelerated or otherwise become due prior to their maturity date, in each case, as a result of an Event of Default (including, but not limited to, upon the occurrence of an Event of Default specified in clause (g) or (h) of Section 8.1 (including the acceleration of claims by operation of law)), the amount of principal of and premium on the Notes that becomes due and payable shall equal 100% of the principal amount of the Notes plus the Prepayment Premium in effect on the date of such acceleration or such other prior due date, as if such acceleration or other occurrence were a voluntary prepayment of the Notes accelerated or otherwise becoming due. Without limiting the generality of the foregoing, it is understood and agreed that if the Notes are accelerated or otherwise become due prior to their maturity date, in each case, in respect of any Event of Default (including, but not limited to, upon the occurrence of an Event of Default specified in clause (g) or (h) of Section 8.1 (including the acceleration of claims by operation of law)), the Prepayment Premium applicable with respect to a voluntary prepayment of the Notes will also be due and payable on the date of such acceleration or such other prior due date as though the Notes were voluntarily prepaid as of such date and shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Purchaser's lost profits as a result thereof.

Section 8.2 Application of Proceeds from Collateral. All proceeds from each sale of, or other realization upon, all or any part of the Collateral by any Secured Party after an Event of Default arises shall be applied as follows:

(a) first, to the reimbursable expenses of the Collateral Agent incurred in connection with such sale or other realization upon the Collateral, until the same shall have been paid in full;

(b) second, to all amounts owed to the Collateral Agent then due and payable pursuant to any of the Note Documents, until the same shall have been paid in full;

(c) third, to all reimbursable expenses, if any, of the Purchasers then due and payable pursuant to any of the Note Documents, until the same shall have been paid in full;

(d) fourth, to the fees, interest, Prepayment Premiums and premiums then due and payable under the terms of this Agreement, until the same shall have been paid in full;

(e) fifth, to the aggregate outstanding principal amount of the Notes, until the same shall have been paid in full, allocated *pro rata* among the Secured Parties based on their respective *pro rata* shares of the aggregate amount of such Notes; and

(f) sixth, to the extent any proceeds remain, to the Issuer or as otherwise provided by a court of competent jurisdiction.

All amounts allocated pursuant to the foregoing clauses third through fifth to the Purchasers as a result of amounts owed to the Purchasers under the Note Documents shall be allocated among, and distributed to, the Purchasers *pro rata* based on their respective Pro Rata Shares.

ARTICLE IX

THE COLLATERAL AGENT

Section 9.1 Appointment of the Collateral Agent.

(a) Each Purchaser irrevocably appoints Wells Fargo Bank, National Association as the Collateral Agent and authorizes it to take such actions on its behalf and to exercise such powers as are delegated to the Collateral Agent under this Agreement and the other Note Documents. The Collateral Agent may perform any of its duties hereunder or under the other Note Documents by or through any one or more sub-agents or attorneys-in-fact appointed by the Collateral Agent, and the Collateral Agent shall not be liable for the negligence or misconduct of such sub-agents or attorneys-in-fact appointed with due care. The Collateral Agent and any such sub-agent or attorney-in-fact may perform any and all of its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions set forth in this Article shall apply to any such sub-agent, attorney-in-fact or Related Party. Without limiting the generality of the foregoing, each Secured Party (other than the Collateral Agent) acknowledges that it has received a copy of the First Lien/Second Lien Intercreditor Agreement, consents to and authorizes the Collateral Agent's execution and delivery thereof on behalf of such Secured Party and agrees to be bound by the terms and provisions thereof, including any purchase option contained therein.

Section 9.2 Nature of Duties of the Collateral Agent. The Collateral Agent shall not have any duties or obligations except those expressly set forth in this Agreement and the other Note Documents. Without limiting the generality of the foregoing, (a) the Collateral Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or an Event of Default has occurred and is continuing, (b) the Collateral Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except those discretionary rights and powers expressly contemplated by the Note Documents that the Collateral Agent is directed to exercise in writing by the Required Purchasers (or such other number or percentage of the Purchasers as shall be necessary under the circumstances as provided in Section 10.2), and the Collateral Agent shall, subject to the immediately following proviso, take any action as directed by the Required Purchasers (or such other number or percentage of the Purchasers as shall be necessary under the circumstances as provided in Section 10.2), provided that the Collateral Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Collateral Agent to liability or that is contrary to any Note Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Purchaser in violation of any Debtor Relief Law; and (c) except as expressly set forth in the Note Documents, the Collateral Agent shall not have any duty to disclose (unless required by a court or regulatory body), and shall not be liable for the failure to disclose, any information relating to the Issuer or any of its Subsidiaries that is communicated to or obtained by the Collateral Agent or any of its Affiliates in any capacity. The Collateral Agent shall not be liable for any action taken or not taken by it, its sub-agents or its attorneys-in-fact with the consent or at the request of the Required Purchasers (or such other number or percentage of the Purchasers set forth herein or in the other Note Documents). The Collateral Agent shall not be deemed to have knowledge of any Default or Event of Default unless a Responsible Officer of the Collateral Agent (i) has actual knowledge thereof or (ii) receives written notice thereof (which notice shall include an express reference to such event being a "Default" or "Event of Default" hereunder), and the Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Note Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements, or other terms and conditions set forth in any Note Document, (iv) the validity, enforceability, effectiveness or genuineness of any Note Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article III or elsewhere in any Note Document, other than to confirm receipt of items expressly required to be delivered to the Collateral Agent, or (vi) any other matter hereunder or under the other Note Documents. The Collateral Agent may consult with legal counsel (including counsel for the Issuer) concerning all matters pertaining to such duties. In the event that the Collateral Agent receives any notice or other communication pursuant to the First Lien/Second Lien Intercreditor Agreement, the ABDC Intercreditor Agreement or any other intercreditor agreement or subordination agreement, the Collateral Agent shall promptly deliver a copy of such notice or other communication to each of the Purchasers.

Section 9.3 Lack of Reliance on the Collateral Agent. Each of the Purchasers acknowledges that it has, independently and without reliance upon the Collateral Agent or any other Purchaser and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement, and that the Collateral Agent has not been, and will not be, acting as an advisor, agent or fiduciary for such Purchaser. Each of the Purchasers also acknowledges that it will, independently and without reliance upon the Collateral Agent or any other Purchaser and based on such documents and information as it has deemed appropriate, continue to make its own decisions in taking or not taking any action under or based on this Agreement, any related agreement or any document furnished hereunder or thereunder.

Section 9.4 Certain Rights of the Collateral Agent.

(a) Notwithstanding anything else to the contrary herein, whenever reference is made in this Agreement to any discretionary action by, consent, designation, specification, requirement or approval of, notice, request or other communication from, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by the Collateral Agent or to any election, decision, opinion, acceptance, use of judgment, expression of satisfaction, reasonable satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by the Collateral Agent, it is understood that in all cases the Collateral Agent shall be acting at the direction of the Required Purchasers. In all cases, the Collateral Agent shall be fully justified in failing or refusing to take any such action under this Agreement if it shall not have received such written instruction, advice or concurrence of the Required Purchasers, as it deems appropriate. Without limiting the foregoing, no Purchaser shall have any right of action whatsoever against the Collateral Agent as a result of the Collateral Agent acting or refraining from acting hereunder in accordance with the instructions of the Required Purchasers where required by the terms of this Agreement. If instructed to take action outside of the scope of its duties set forth herein, the Collateral Agent shall not be required to act until it shall have received such indemnity or security from the Purchasers as it may reasonably require for all costs, claims, losses, expenses (including reasonable legal fees and expenses) and liabilities which it will or may expend or incur in complying or continuing to comply with such instructions.

(b) For purposes of clarity, phrases such as "satisfactory to the Collateral Agent", "approved by the Collateral Agent", "acceptable to the Collateral Agent", "in the Collateral Agent's discretion", and phrases of similar import, except as otherwise expressly provided herein, authorize and permit the Collateral Agent to act or decline to act in its discretion.

Section 9.5 **Reliance by the Collateral Agent.** The Collateral 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, posting or other distribution) believed by it to be genuine and to have been signed, sent or made by the proper Person. The Collateral Agent may also rely upon any statement made to it orally or by telephone and shall not incur any liability for relying thereon. The Collateral Agent may consult with legal counsel (including counsel for the Issuer), independent public accountants and other experts selected by it and shall not be liable for any action taken or not taken by it in accordance with the advice of such counsel, accountants or experts.

Section 9.6 **The Collateral Agent in its Individual Capacity.** The Person serving as the Collateral Agent shall have the same rights and powers under this Agreement and any other Note Document in its capacity as a Purchaser (if such Person is a Purchaser) as any other Purchaser and may exercise or refrain from exercising the same as though it were not the Collateral Agent; and the terms "Purchasers", "Required Purchasers", or any similar terms shall, unless the context clearly otherwise indicates, include the Collateral Agent in its individual capacity (if the Collateral Agent in its individual capacity is a Purchaser). The Person acting as the Collateral Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of business with the Issuer or any Subsidiary or Affiliate of the Issuer as if it were not the Collateral Agent hereunder.

Section 9.7 **No Filing Obligation.** For the avoidance of doubt, nothing herein shall require the Collateral Agent to file financing statements, termination statements or continuation statements, or be responsible for maintaining the security interests purported to be created as described herein (except for the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder or under any other Note Documents) and such responsibility shall be solely that of the Note Parties; provided that, upon the written direction of the Required Purchasers, the Collateral Agent shall file financing statements, termination statements or continuation statements. The Collateral Agent shall not be responsible for and makes no representation as to the existence, genuineness, value or protection of any Collateral, for the legality, effectiveness or sufficiency of any Note Document, or for the creation, perfection (or maintenance of such perfection), priority, sufficiency or protection of any liens securing the Obligations.

Section 9.8 **Successor Collateral Agent**.

(a) The Collateral Agent may resign at any time by giving notice thereof to the Purchasers and the Issuer. Upon any such resignation, the Required Purchasers shall have the right to appoint a successor Collateral Agent, subject to approval by the Issuer provided that no Default or Event of Default shall exist at such time. If no successor Collateral Agent shall have been so appointed, and shall have accepted such appointment within 30 days after the retiring Collateral Agent gives notice of resignation, then the retiring Collateral Agent may, on behalf of the Purchasers, appoint a successor Collateral Agent which shall be organized under the laws of the United States or any state thereof or maintain an office in the United States.

(b) Upon the acceptance of its appointment as the Collateral Agent hereunder by a successor, such successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent, and the retiring Collateral Agent shall be discharged from its duties and obligations under this Agreement and the other Note Documents. If, within 45 days after written notice is given of the retiring Collateral Agent's resignation under this Section, no successor Collateral Agent shall have been appointed and shall have accepted such appointment, then on such 45th day (i) the retiring Collateral Agent's resignation shall become effective (except the retiring Collateral Agent shall continue to hold such collateral security as nominee until such time as a successor Collateral Agent is appointed or the Collateral Agent can apply to a court of competent jurisdiction to deposit funds with such court), (ii) the retiring Collateral Agent shall thereupon be discharged from its duties and obligations under the Note Documents and (iii) the Required Purchasers shall thereafter perform all duties of the retiring Collateral Agent under the Note Documents until such time as the Required Purchasers appoint a successor Collateral Agent as provided above. After any retiring Collateral Agent's resignation hereunder, the rights, protections and indemnities afforded to the Collateral Agent in the Note Documents shall continue in effect for the benefit of such retiring or removed Collateral Agent and its representatives and agents in respect of any actions taken or not taken by any of them while it was serving as the Collateral Agent.

(c) Any corporation into which the Collateral Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Collateral Agent shall be a party, or any corporation succeeding to all or substantially all of the Collateral Agent's business, shall be the successor of the Collateral Agent hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

Section 9.9 The Collateral Agent May File Proofs of Claim.

(a) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Note Party, the Collateral Agent (irrespective of whether the principal of any Note shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Collateral Agent shall have made any demand on the Issuer) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Notes and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Purchasers and the Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Purchasers and the Collateral Agent and its agents and counsel and all other amounts due the Purchasers and the Collateral Agent hereunder or in connection herewith) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same.

(b) Any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Purchaser to make such payments to the Collateral Agent and, if the Collateral Agent shall consent to the making of such payments directly to the Purchasers, to pay to the Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Collateral Agent and its agents and counsel, and any other amounts due the Collateral Agent under this Agreement.

Nothing contained herein shall be deemed to authorize the Collateral Agent to authorize or consent to or accept or adopt on behalf of any Purchaser any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Purchaser or to authorize the Collateral Agent to vote in respect of the claim of any Purchaser in any such proceeding.

Section 9.10 Authorization to Execute Other Note Documents. Each Purchaser hereby authorizes the Collateral Agent to execute on behalf of all Purchasers all Note Documents (including, without limitation, the First Lien/Second Lien Intercreditor Agreement, the Collateral Documents and any subordination agreements) other than this Agreement.

Section 9.11 Collateral and Guaranty Matters. The Purchasers irrevocably authorize the Collateral Agent, at its option and in its discretion:

(a) to release any Lien on any property granted to or held by the Collateral Agent under any Note Document (i) upon the termination of the Commitments and the Delayed Draw Commitments and the payment in full of all Obligations (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Note Document, or (iii) if approved, authorized or ratified in writing in accordance with Section 10.2; and

(b) to release any Note Party from its obligations under the applicable Collateral Documents if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon confirmation in writing from the Required Purchasers of the Collateral Agent's authority to release its interest in particular types or items of property, or to release any Note Party from its obligations under the applicable Collateral Documents pursuant to this Section, the Collateral Agent will so release its interest such types or items of property, or release such Note Party from its obligations under the applicable Collateral Documents. In each case as specified in this Section, the Collateral Agent is authorized, at the Issuer's expense, to execute and deliver to the applicable Note Party such documents as such Note Party may reasonably request to evidence the release of such item of Collateral from the Liens granted under the applicable Collateral Documents, or to release such Note Party from its obligations under the applicable Collateral Documents, in each case in accordance with the terms of the Note Documents and this Section.

Section 9.12 Right to Realize on Collateral and Enforce Guarantee. Anything contained in any of the Note Documents to the contrary notwithstanding, the Issuer, the Collateral Agent and each Purchaser hereby agree that (i) no Purchaser shall have any right individually to realize upon any of the Collateral or to enforce the Collateral Documents, it being understood and agreed that all powers, rights and remedies under the Collateral Documents may be exercised solely by the Collateral Agent, and (ii) in the event of a foreclosure by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Collateral Agent or any Purchaser may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Collateral Agent, as agent for and representative of the Purchasers (but not any Purchaser or Purchasers in its or their respective individual capacities unless the Required Purchasers shall otherwise agree in writing), shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other disposition.

Section 9.13 **ABDC INTERCREDITOR AGREEMENT.** EACH PURCHASER (A) AGREES THAT IT WILL BE BOUND BY, AND WILL TAKE NO ACTIONS CONTRARY TO, THE PROVISIONS OF THE ABDC INTERCREDITOR AGREEMENT, (B) AUTHORIZES AND INSTRUCTS THE COLLATERAL AGENT TO ENTER INTO THE ABDC INTERCREDITOR AGREEMENT AS COLLATERAL AGENT ON BEHALF OF SUCH PURCHASER, AND TO TAKE ALL ACTIONS (AND EXECUTE ALL DOCUMENTS) REQUIRED (OR DEEMED ADVISABLE) IN ACCORDANCE WITH THE TERMS OF THE ABDC INTERCREDITOR AGREEMENT, AND (C) ACKNOWLEDGES THAT A COPY OF THE ABDC INTERCREDITOR AGREEMENT WAS MADE AVAILABLE TO SUCH PURCHASER AND THAT SUCH PURCHASER REVIEWED THE ABDC INTERCREDITOR AGREEMENT. NOT IN LIMITATION OF THE FOREGOING, EACH PURCHASER HEREBY AGREES THAT THE COLLATERAL AGENT SHALL EXERCISE ALL RIGHTS AND REMEDIES UNDER THE ABDC INTERCREDITOR AGREEMENT ON BEHALF OF SUCH PURCHASER.

Section 9.14 **FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT.** EACH PURCHASER (A) AGREES THAT IT WILL BE BOUND BY, AND WILL TAKE NO ACTIONS CONTRARY TO, THE PROVISIONS OF THE FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT, (B) AUTHORIZES AND INSTRUCTS THE COLLATERAL AGENT TO ENTER INTO THE FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT AS COLLATERAL AGENT ON BEHALF OF SUCH PURCHASER, AND TO TAKE ALL ACTIONS (AND EXECUTE ALL DOCUMENTS) REQUIRED (OR DEEMED ADVISABLE) IN ACCORDANCE WITH THE TERMS OF THE FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT, AND (C) ACKNOWLEDGES THAT A COPY OF THE FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT WAS MADE AVAILABLE TO SUCH PURCHASER AND THAT SUCH PURCHASER REVIEWED THE FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT. EACH PURCHASER IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS OF THE FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT AND THE TERMS AND PROVISIONS THEREOF, AND NEITHER THE COLLATERAL AGENT NOR ANY OF ITS AFFILIATES MAKES ANY REPRESENTATION TO ANY PURCHASER AS TO THE SUFFICIENCY OR THE ADVISABILITY OF THE PROVISIONS CONTAINED THEREIN. NOT IN LIMITATION OF THE FOREGOING, EACH PURCHASER HEREBY AGREES THAT THE COLLATERAL AGENT SHALL EXERCISE ALL RIGHTS AND REMEDIES UNDER THE FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT ON BEHALF OF SUCH PURCHASER AND IN THE EVENT OF AN INCONSISTENCY BETWEEN THIS AGREEMENT AND THE TERMS OF THE FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT, THE TERMS OF THE FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT SHALL GOVERN. THE FOREGOING PROVISIONS ARE INTENDED AS AN INDUCEMENT TO THE PURCHASERS UNDER THE FIRST LIEN NOTE PURCHASE AGREEMENT TO PURCHASE NOTES PURSUANT THERETO AND SUCH PURCHASERS ARE THE INTENDED THIRD PARTY BENEFICIARIES OF SUCH PROVISIONS AND THE PROVISIONS OF THE FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT.

ARTICLE X

MISCELLANEOUS

Section 10.1 **Notices**.

(a) Written Notices.

(i) Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications to any party herein to be effective shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

To the Issuer:	BioScrip, Inc. 1600 Broadway, Suite 700 Denver, CO 80202 Attn: Stephen Deitsch, Senior Vice President, Chief Financial Officer & Treasurer Telecopy Number: (720) 468-4040
With a copy to (for Information purposes only):	Dechert LLP 1095 Avenue of the Americas New York, New York 10036 Attention: Scott M. Zimmerman Telecopy Number: (212) 698-3599
To the Collateral Agent:	Wells Fargo Bank, National Association 9062 Old Annapolis Road Columbia, Maryland 21045 Attention: Jason Prisco – BioScrip, Inc. Second Lien NPA Email: CTSBankDebtAdministrationTeam@wellsfargo.com
To any other Purchaser:	the address set forth on the applicable signature page hereto

Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All such notices and other communications shall be effective upon actual receipt by the relevant Person or, if delivered by overnight courier service, upon the first Business Day after the date deposited with such courier service for overnight (next-day) delivery or, if sent by telecopy, upon transmittal in legible form by facsimile machine or, if mailed, upon the third Business Day after the date deposited into the mail or, if delivered by hand, upon delivery; provided that notices delivered to the Collateral Agent or any Purchaser shall not be effective until actually received by such Person at its address specified in this Section.

(ii) Any agreement of the Collateral Agent or any Purchaser herein to receive certain notices by telephone or facsimile is solely for the convenience and at the request of the Issuer. The Collateral Agent and each Purchaser shall be entitled to rely on the authority of any Person purporting to be a Person authorized by the Issuer to give such notice and the Collateral Agent and the Purchasers shall not have any liability to the Issuer or other Person on account of any action taken or not taken by the Collateral Agent or any Purchaser in reliance upon such telephonic or facsimile notice. The obligation of the Issuer to repay the Notes and all other Obligations hereunder shall not be affected in any way or to any extent by any failure of the Collateral Agent or any Purchaser to receive written confirmation of any telephonic or facsimile notice or the receipt by the Collateral Agent or any Purchaser of a confirmation which is at variance with the terms understood by the Collateral Agent and such Purchaser to be contained in any such telephonic or facsimile notice.

(b) Electronic Communications.

(i) Notices and other communications to the Collateral Agent and each Purchaser hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by such Person. The Issuer may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(ii) Unless the Collateral Agent or any Purchaser otherwise prescribes, (i) notices and other communications sent to an e-mail address of such Person shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); 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.

Section 10.2 Waiver; Amendments.

(a) No failure or delay by the Collateral Agent or any Purchaser in exercising any right or power hereunder or under any other Note Document, and no course of dealing between the Issuer and the Collateral Agent or any Purchaser**,** 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 right or power, preclude any other or further exercise thereof or the exercise of any other right or power hereunder or thereunder. The rights and remedies of the Collateral Agent and the Purchasers hereunder and under the other Note Documents are cumulative and are not exclusive of any rights or remedies provided by law. No waiver of any provision of this Agreement or of any other Note Document or consent to any departure by the Issuer or any other Note Party therefrom shall in any event be effective unless the same shall be permitted by clause (b) of this Section, 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, neither the purchase of a Note nor the making of a Delayed Draw Advance shall be construed as a waiver of any Default or Event of Default, regardless of whether the Collateral Agent or any Purchaser may have had notice or knowledge of such Default or Event of Default at the time.

(b) No amendment or waiver of any provision of this Agreement or of the other Note Documents (other than the Fee Letters), nor consent to any departure by the Issuer or any other Note Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Issuer and the Required Purchasers, or the Issuer and the Collateral Agent with the consent of the Required Purchasers, and then such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that, in addition to the consent of the Required Purchasers, no amendment, waiver or consent shall:

(i) increase the Commitment or Delayed Draw Commitment of any Purchaser without the written consent of such Purchaser;

(ii) reduce the principal amount of any Note or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Purchaser affected thereby (except that any waiver of post-default rates of interests shall not constitute a reduction in the rate of interest or fees for purposes of this clause (ii));

(iii) postpone or extend the date fixed for any payment of any principal of, or interest on, any Note or any fees hereunder or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date for the termination or reduction of any Commitment or Delayed Draw Commitment, without the written consent of each Purchaser affected thereby (it being understood that a waiver of any condition precedent or the waiver of any Default, Event of Default or mandatory prepayment shall not constitute a postponement, extension or increase of any Note, Commitment or Delayed Draw Commitment hereunder);

(iv) change Section 8.2 without the written consent of each Purchaser affected thereby;

(v) change Section 2.18 in a manner that would alter the *pro rata* sharing of payments required thereby, without the written consent of each Purchaser;

(vi) change any of the provisions of this clause (b) or the definition of "Required Purchasers" or any other provision hereof specifying the number or percentage of Purchasers which are required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the consent of each Purchaser;

(vii) except in connection with a transaction otherwise not prohibited by this Agreement or any other Note Document, release all or substantially all of the value of any Guarantee guarantying any of the Obligations, or release all or substantially all of the guarantors, or limit the liability of such guarantors, under any guaranty agreement guaranteeing any of the Obligations, in each case, without the written consent of each Purchaser;

(viii) release all or substantially all of the Collateral securing the Obligations, without the written consent of each Purchaser; or

(ix) subordinate all or substantially all of the Liens securing the Obligations, other than to the Liens securing the First Lien Obligations pursuant to the First Lien/Second Lien Intercreditor Agreement, without the consent of each Purchaser;

provided, further, that no such amendment, waiver or consent shall amend, modify or otherwise affect the rights, duties or obligations of the Collateral Agent without the prior written consent of the Collateral Agent.

Notwithstanding anything to the contrary herein, no Defaulting Purchaser shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that neither the Commitment nor the Delayed Draw Commitment of such Purchaser may be increased or extended, and amounts payable to such Purchaser hereunder may not be permanently reduced, without the consent of such Purchaser (other than reductions in fees and interest in which such reduction does not disproportionately affect such Purchaser).

Section 10.3 Expenses; Indemnification.

(a) The Issuer shall pay (i) the expenses required to be reimbursed pursuant to the Commitment Letter, (ii) all fees agreed to from time to time between the Issuer and the Collateral Agent and the reasonable and documented costs and expenses of the Collateral Agent and its Affiliates in connection with the preparation and administration of the Note Documents and all reasonable and documented costs and expenses of the Collateral Agent, the Purchasers and their respective Affiliates in connection with any amendments, modifications or waivers thereof (whether or not the transactions contemplated in this Agreement or any other Note Document shall be consummated), and the due diligence relating thereto (including the reasonable and documented fees, disbursements, and expenses of one outside counsel to the Collateral Agent and one outside counsel to each Purchaser (and any required special or local counsel)), and (iii) all documented costs and expenses incurred by the Collateral Agent or any Purchaser (including the documented fees, disbursements, and expenses of one outside counsel to each such party (and any required special or local counsel to each such party)) in connection with the enforcement or protection of its rights, and the discharge of its duties, in connection with the Note Documents, including its rights under this Section, or in connection with the Notes purchased hereunder, including all such documented costs and expenses incurred during any workout, restructuring or negotiations in respect of such Notes.

(b) The Issuer shall indemnify the Collateral Agent and each Purchaser, and each Related Party of any of the foregoing Persons (each such Person and Related Party being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and expenses (including the fees, disbursements, and expenses of any counsel for any Indemnitee), and shall reimburse each Indemnitee upon demand for any legal or other expenses incurred in connection with investigating or defending any of the following, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Issuer or any other Note Party or any of their Subsidiaries or Affiliates arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Note Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Note or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by the Issuer or any of its Subsidiaries, or any Environmental Liability related in any way to the Issuer or any of its Subsidiaries, or (iv) any actual or prospective suit, claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Issuer or any other Note Party or by the Issuer's equity holders, Affiliates or creditors, and regardless of whether any Indemnitee or the Issuer 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 other expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from (A) the gross negligence or willful misconduct of such Indemnitee or (B) other than with respect to the Collateral Agent and its Related Parties, a material breach by such Indemnitee of any of its undertakings, obligations or commitments under this Agreement or any other Note Documents (except that, regardless of its action or inaction, the Collateral Agent shall have no liability in connection with (iii) above). No Indemnitee shall be responsible or liable for any damages arising from the use by others of any information or other materials obtained through Syndtrak, Intralinks, any other Internet or intranet website, or any other electronic, telecommunications or other information transmission systems, except to the extent that such damages are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from (A) the gross negligence or willful misconduct of such Indemnitee or (B) other than with respect to the Collateral Agent and its Related Parties, a material breach by such Indemnitee of any of its undertakings, obligations or commitments under this Agreement or any other Note Documents.

(c) This Section 10.3 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, liabilities and related expenses arising from any non-Tax claim.

(d) To the extent that the Issuer fails to pay any amount required to be paid to the Collateral Agent under clause (a), (b) or (c) hereof, each Purchaser severally agrees to pay to the Collateral Agent such Purchaser's *pro rata* share (in accordance with the aggregate outstanding principal amount of the Note(s) held by it determined as of the time that the unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified payment, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Collateral Agent in its capacity as such. Additionally, each Purchaser shall not assert any claim against the Collateral Agent on any theory of liability for special, consequential, exemplary or punitive damages arising out of or in connection with any Note Document.

(e) To the extent permitted by applicable law, the Issuer shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to actual or direct damages) arising out of, in connection with or as a result of this Agreement, any other Note Document or any agreement or instrument contemplated hereby, the transactions contemplated therein, any Note or the use of proceeds thereof.

(f) All amounts due under this Section shall be payable promptly after written demand therefor.

Section 10.4 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, except that the Issuer may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Collateral Agent and each Purchaser, and no Purchaser may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of clause (b) of this Section, (ii) by way of participation in accordance with the provisions of clause (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of clause (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in clause (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Collateral Agent and the Purchasers) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Purchaser may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments, Delayed Draw Commitments and Notes at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Purchaser's Commitments, Delayed Draw Commitments and Notes at the time owing to it or in the case of an assignment to a Purchaser, an Affiliate of a Purchaser or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in clause (b)(i)(A) of this Section, the aggregate amount of the Commitment and Delayed Draw Commitment (which for this purpose includes Notes outstanding thereunder) or, if the applicable Commitment or Delayed Draw Commitment is not then in effect, the outstanding principal balance of the Notes of the assigning Purchaser subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Issuer or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than $1,000,000 and in minimum increments of $1,000,000, unless, so long as no Event of Default has occurred and is continuing, the Issuer otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Purchaser's rights and obligations under this Agreement with respect to the Notes, the Commitments or the Delayed Draw Commitments assigned, except that this clause (b)(ii) shall not (except as set forth in clause (viii) below) prohibit any Purchaser from assigning all or a portion of its rights and obligations among the Commitments and the Delayed Draw Commitments on a non *pro rata* basis.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by clause (b)(i)(B) of this Section and, in addition:

(A) the consent of the Issuer (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to a Purchaser, an Affiliate of such Purchaser or an Approved Fund of such Purchaser; provided, that the Issuer shall be deemed to have consented to any such assignment unless it objects thereto by written notice to the assigning Purchaser within five (5) Business Days after having received notice thereof; provided, further, that any refusal by the Issuer to consent to an assignment to a Disqualified Institution shall not be deemed unreasonable.

(iv) Assignment and Assumption. The parties to each assignment shall deliver to the Issuer (A) a duly executed Assignment and Assumption, together with any Note subject to such assignment, (B) unless the assignee is already a Purchaser, a designation of one or more contacts to whom all Note information (which may contain material non-public information about the Issuer and its Subsidiaries and their Related Parties or their securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable law, Federal, state and foreign securities laws and (C) the documents required under Section 2.17(f), and the Issuer shall record such assignment in the Register.

(v) No Assignment to the certain Persons. No such assignment shall be made to (A) the Issuer or any of the Issuer's Affiliates or Subsidiaries, (B) any Defaulting Purchaser or any of its Subsidiaries, or any Person who, upon becoming a Purchaser hereunder, would constitute any of the foregoing Persons described in this clause (B), (C) so long as no Event of Default is in existence, any Disqualified Institution or (D) any Person (other than an existing Purchaser or an Affiliate or Approved Fund of an existing Purchaser) that is not an "accredited investor" (as defined in Regulation D of the Securities Act).

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Purchaser hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Collateral Agent and the other Purchasers in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Issuer and the Required Purchasers, the applicable pro rata share of Delayed Draw Advances previously requested but not funded by the Defaulting Purchaser, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Purchaser to the Collateral Agent and each other Purchaser hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Notes. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Purchaser hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Purchaser for all purposes of this Agreement until such compliance occurs.

(viii) Assignments Prior to the Delayed Draw Date. Any other term or provision of this Agreement to the contrary notwithstanding, in connection with any assignment of rights and obligations of any Purchaser prior to the Delayed Draw Date, such assignment shall consist of such Purchaser's rights and obligations under the Initial Notes and the Delayed Draw Commitments on a pro rata basis.

Subject to acceptance and recording thereof by the Issuer pursuant to clause (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Purchaser under this Agreement, and the assigning Purchaser thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Purchaser's rights and obligations under this Agreement, such Purchaser shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 10.3 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that, except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Purchaser will constitute a waiver or release of any claim of any party hereunder arising from such Purchaser's having been a Defaulting Purchaser. Any assignment or transfer by a Purchaser of rights or obligations under this Agreement that does not comply with this clause shall be treated for purposes of this Agreement as a sale by such Purchaser of a participation in such rights and obligations in accordance with clause (d) of this Section. If the consent of the Issuer to an assignment is required hereunder (including a consent to an assignment which does not meet the minimum assignment thresholds specified above), the Issuer shall be deemed to have given its consent unless it shall object thereto by written notice to assigning Purchaser within five (5) Business Days after notice thereof has actually been delivered by the assigning Purchaser to the Issuer.

(c) The Issuer shall maintain at one of its offices in Denver, CO a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Purchasers, and the Commitments and Delayed Draw Commitments of, and principal and interest amount of the Notes owing to, each Purchaser pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Issuer, the Collateral Agent and the Purchasers shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Purchaser hereunder for all purposes of this Agreement. Information contained in the Register with respect to any Purchaser shall be available for inspection by such Purchaser at any reasonable time and from time to time upon reasonable prior notice. The Collateral Agent shall have the right, at any time, to request a copy of the Register.

(d) Any Purchaser may at any time, without the consent of, or notice to, the Issuer, sell participations to any Person (other than a natural person, the Issuer, any of the Issuer's Affiliates or Subsidiaries, or any Competitor) (each, a "Participant") in all or a portion of such Purchaser's rights and/or obligations under this Agreement (including all or a portion of its Commitment, Delayed Draw Commitment and/or the Notes owing to it); provided that (i) such Purchaser's obligations under this Agreement shall remain unchanged, (ii) such Purchaser shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Issuer, the Collateral Agent and the other Purchasers shall continue to deal solely and directly with such Purchaser in connection with such Purchaser's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Purchaser sells such a participation shall provide that such Purchaser shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Purchaser will not, without the consent of the Participant, agree to any amendment, modification or waiver with respect to the following to the extent affecting such Participant: (i) increase the Commitment or Delayed Draw Commitment of such Purchaser; (ii) reduce the principal amount of any Note or reduce the rate of interest thereon, or reduce any fees payable hereunder; (iii) postpone the date fixed for any payment of any principal of, or interest on, any Note or any fees hereunder or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date for the termination or reduction of any Commitment or Delayed Draw Commitment; (iv) change Section 2.18 in a manner that would alter the *pro rata* sharing of payments required thereby; (v) change any of the provisions of Section 10.2(b) or the definition of "Required Purchasers" or any other provision hereof specifying the number or percentage of Purchasers which are required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder; (vi) release all or substantially all of the guarantors, or limit the liability of such guarantors, under any guaranty agreement guaranteeing any of the Obligations; or (vii) release all or substantially all collateral (if any) securing any of the Obligations. Subject to clause (e) of this Section, the Issuer agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16, and 2.17 to the same extent as if it were a Purchaser and had acquired its interest by assignment pursuant to clause (b) of this Section; provided that such Participant agrees to be subject to Section 2.19 as though it were a Purchaser. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.7 as though it were a Purchaser; provided that such Participant agrees to be subject to Section 2.18 as though it were a Purchaser.

Each Purchaser that sells a participation shall, acting solely for this purpose as an agent of the Issuer, maintain a register in the United States on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Notes or other obligations under the Note Documents (the "Participant Register"). The entries in the Participant Register shall be conclusive, absent manifest error, and such Purchaser shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. The Issuer shall have inspection rights to such Participant Register (upon reasonable prior notice to the applicable Purchaser) solely for purposes of demonstrating that such Notes or other obligations under the Note Documents are in "registered form" for purposes of the Code.

(e) A Participant shall not be entitled to receive any greater payment under Sections 2.15 and 2.17 than the applicable Purchaser 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 Issuer's prior written consent. A Participant shall not be entitled to the benefits of Section 2.17 unless the Issuer is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Issuer, to comply with Section 2.17(e) and (f) as though it were a Purchaser.

(f) Any Purchaser 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 Purchaser, including, without limitation, any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Purchaser from any of its obligations hereunder or substitute any such pledgee or assignee for such Purchaser as a party hereto.

Section 10.5 Governing Law; Jurisdiction; Consent to Service of Process.

(a) This Agreement and the other Note Documents and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Note Document (except, as to any other Note Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be construed in accordance with and be governed by the law of the State of New York.

(b) The Issuer hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court for the Southern District of New York, and of the Supreme Court of the State of New York sitting in New York county, and of any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Note Document or the transactions contemplated hereby or thereby, 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 District Court or New York state court or, to the extent permitted by applicable law, such appellate 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 Note Document shall affect any right that the Collateral Agent or any Purchaser may otherwise have to bring any action or proceeding relating to this Agreement or any other Note Document against the Issuer or its properties in the courts of any jurisdiction.

(c) The Issuer irrevocably and unconditionally waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding described in clause (b) of this Section and brought in any court referred to in clause (b) of this Section. Each of the parties hereto irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to the service of process in the manner provided for notices in Section 10.1. Nothing in this Agreement or in any other Note Document will affect the right of any party hereto to serve process in any other manner permitted by law.

Section 10.6 WAIVER OF JURY TRIAL. EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF THIS AGREEMENT OR ANY OTHER NOTE DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER 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 AND THE OTHER NOTE DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.7 Right of Set-off. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, each Purchaser shall have the right, at any time or from time to time upon the occurrence and during the continuance of an Event of Default, without prior notice to the Issuer, any such notice being expressly waived by the Issuer to the extent permitted by applicable law, to set off and apply against all deposits (general or special, time or demand, provisional or final) of the Issuer at any time held or other obligations at any time owing by such Purchaser to or for the credit or the account of the Issuer against any and all Obligations held by such Purchaser, irrespective of whether such Purchaser shall have made demand hereunder and although such Obligations may be unmatured; provided that in the event that any Defaulting Purchaser shall exercise any such right of setoff, (x) all amounts so set off shall be applied in accordance with the provisions of Section 2.21(a) and, pending such application, shall be segregated by such Defaulting Purchaser from its other funds and deemed held in trust for the benefit of the applicable recipients, and (y) the Defaulting Purchaser shall provide promptly to the Collateral Agent and the other Purchasers a statement describing in reasonable detail the Obligations owing to such Defaulting Purchaser as to which it exercised such right of setoff. Each Purchaser agrees promptly to notify the Issuer after any such set-off and any application made by such Purchaser; provided that the failure to give such notice shall not affect the validity of such set-off and application. Each Purchaser agrees to apply all amounts collected from any such set-off to the Obligations before applying such amounts to any other Indebtedness or other obligations owed by the Issuer and any of its Subsidiaries to such Purchaser.

Section 10.8 Counterparts; Integration. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Agreement, the Fee Letters, the other Note Documents, and any separate letter agreements relating to any fees payable to the Collateral Agent and its Affiliates constitute the entire agreement among the parties hereto and thereto and their affiliates regarding the subject matters hereof and thereof and supersede all prior agreements and understandings, oral or written, regarding such subject matters. Delivery of an executed counterpart to this Agreement or any other Note Document by facsimile transmission or by electronic mail in pdf format shall be as effective as delivery of a manually executed counterpart hereof.

Section 10.9 Survival. All covenants, agreements, representations and warranties made by the Issuer herein and in the certificates, reports, notices or other instruments delivered in connection with or pursuant to 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 and the other Note Documents, the issuance and purchase of any Notes and the making of any Delayed Draw Advances, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Collateral Agent or any Purchaser 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 the principal of or any accrued interest on any Note or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Commitments and the Delayed Draw Commitments have not expired or terminated. The provisions of Sections 2.15, 2.16, 2.17, and 10.3 and Article IX shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Notes, the expiration or termination of the Commitments and the Delayed Draw Commitments or the termination of this Agreement or any provision hereof.

Section 10.10 Severability. Any provision of this Agreement or any other Note Document held to be illegal, invalid or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity or unenforceability without affecting the legality, validity or enforceability of the remaining provisions hereof or thereof; and the illegality, invalidity or unenforceability of a particular provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.11 **Confidentiality.** Each of the Collateral Agent and the Purchasers agrees to take normal and reasonable precautions to maintain the confidentiality of any information relating to the Issuer or any of its Subsidiaries or any of their respective businesses, to the extent designated in writing as confidential and provided to it by the Issuer or any of its Subsidiaries, other than any such information that is available to the Collateral Agent or any Purchaser on a non-confidential basis prior to disclosure by the Issuer or any of its Subsidiaries, except that such information may be disclosed (i) to any Related Party of the Collateral Agent or any such Purchaser including, without limitation, accountants, legal counsel and other advisors (and to other persons authorized by the Collateral Agent or a Purchaser to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.11), (ii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (iii) to the extent requested by any regulatory agency or authority purporting to have jurisdiction over it (including any self-regulatory authority such as the National Association of Insurance Commissioners), (iv) to the extent that such information becomes publicly available other than as a result of a breach of this Section, or which becomes available to the Collateral Agent, any Purchaser or any Related Party of any of the foregoing on a non-confidential basis from a source other than the Issuer or any of its Subsidiaries, (v) in connection with the exercise of any remedy hereunder or under any other Note Documents or any suit, action or proceeding relating to this Agreement or any other Note Documents or the enforcement of rights hereunder or thereunder, (vi) subject to execution by such Person of an agreement containing provisions substantially the same as those of this Section, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, or (B) any actual or prospective party (or its Related Parties) to any swap or derivative or other transaction under which payments are to be made by reference to the Issuer and its obligations, this Agreement or payments hereunder, (vii) to any rating agency, (viii) to the CUSIP Service Bureau or any similar organization, (ix) to any Purchaser's financing sources; provided that, prior to any disclosure, such financing source is informed of the confidential nature of such information, or (x) with the consent of the Issuer. Any Person required to maintain the confidentiality of any information as provided for in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such information as such Person would accord its own confidential information. Furthermore, the Note Parties and the Purchasers shall not, without the prior written consent of the applicable Purchaser, in each instance, (a) use in advertising, publicity, or otherwise the name of such Purchaser or any of its Affiliates, or any partner or employee of such Purchaser or any of its Affiliates, or (b) represent that any product or any service provided has been approved or endorsed by any Purchaser, or any of its Affiliates. In the event of any conflict between the terms of this Section and those of any other Contractual Obligation entered into with any Note Party (whether or not a Note Document), the terms of this Section shall govern.

Section 10.12 **Interest Rate Limitation.** Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Note, together with all fees, charges and other amounts which may be treated as interest on such Note under applicable law (collectively, the "Charges"), shall exceed the maximum lawful rate of interest (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by a Purchaser holding such Note in accordance with applicable law, the rate of interest payable in respect of such Note 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 Note but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Purchaser in respect of other Notes or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Rate to the date of repayment (to the extent permitted by applicable law), shall have been received by such Purchaser.

Section 10.13 **Waiver of Effect of Corporate Seal.** The Issuer represents and warrants that neither it nor any other Note Party is required to affix its corporate seal to this Agreement or any other Note Document pursuant to any Requirement of Law, agrees that this Agreement is delivered by the Issuer under seal and waives any shortening of the statute of limitations that may result from not affixing the corporate seal to this Agreement or such other Note Documents.

Section 10.14 **Patriot Act.** The Collateral Agent and each Purchaser hereby notifies the Note Parties that, pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Note Party, which information includes the name and address of such Note Party and other information that will allow such Purchaser or the Collateral Agent, as applicable, to identify such Note Party in accordance with the Patriot Act. The Note Parties agree to cooperate with the Collateral Agent and each Purchaser and provide the information required in this Section.

Section 10.15 **No Advisory or Fiduciary Responsibility.**

(a) In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Note Document), the Issuer and each other Note Party acknowledges and agrees and acknowledges its Affiliates' understanding that (i) (A) the services regarding this Agreement provided by the Collateral Agent and/or the Purchasers are arm's-length commercial transactions between the Issuer, each other Note Party and their respective Affiliates, on the one hand, and the Collateral Agent and the Purchasers, on the other hand, (B) each of the Issuer and the other Note Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate, and (C) the Issuer and each other Note Party is capable of evaluating and understanding, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Note Documents; (ii) (A) each of the Collateral Agent and the Purchasers is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Issuer, any other Note Party or any of their respective Affiliates, or any other Person, and (B) neither the Collateral Agent nor any Purchaser has any obligation to the Issuer, any other Note Party or any of their Affiliates with respect to the transaction contemplated hereby except those obligations expressly set forth herein and in the other Note Documents; and (iii) the Collateral Agent, the Purchasers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Issuer, the other Note Parties and their respective Affiliates, and each of the Collateral Agent and the Purchasers has no obligation to disclose any of such interests to the Issuer, any other Note Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Issuer and the other Note Parties hereby waives and releases any claims that it may have against the Collateral Agent or any Purchaser with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

(b) The Issuer agrees that the relationship between the Collateral Agent and the Issuer and between each Purchaser and the Issuer is that of creditor and debtor and not that of partners or joint venturers. This Agreement does not constitute a partnership agreement or any other association between the Collateral Agent and the Issuer or between any Purchaser and the Issuer. The Issuer acknowledges that each Purchaser has acted at all times only as a creditor to the Issuer within the normal and usual scope of the activities normally undertaken by a creditor and in no event has the Collateral Agent or any Purchaser attempted to exercise any control over the Issuer or its business or affairs. The Issuer further acknowledges that the Collateral Agent and each Purchaser has not taken or failed to take any action under or in connection with its respective rights under this Agreement or any of the other Note Documents that in any way, or to any extent, has interfered with or adversely affected the Issuer's ownership of Collateral.

Section 10.16 **First Lien/Second Lien Intercreditor Agreement.** Notwithstanding anything herein to the contrary, the lien and security interest granted to Collateral Agent or any other Secured Parties pursuant to or in connection with the Note Documents and the exercise of any right or remedy by thereby or thereunder are subject to the provisions of the First Lien/Second Lien Intercreditor Agreement. In the event of any conflict between the terms of the First Lien/Second Lien Intercreditor Agreement and this Agreement, the terms of the First Lien/Second Lien Intercreditor Agreement shall govern and control. Notwithstanding the foregoing, each Note Party expressly acknowledges and agrees that the First Lien/Second Lien Intercreditor Agreement is solely for the benefit of the parties thereto, and that notwithstanding the fact that the exercise of certain of Collateral Agent's and the Purchasers' rights under this Agreement or any other Note Document may be subject to the First Lien/Second Lien Intercreditor Agreement, no action taken or not taken by Collateral Agent or any other Purchaser in accordance with the terms of the First Lien/Second Lien Intercreditor Agreement shall constitute, or be deemed to constitute, a waiver by Collateral Agent or any other Purchaser of any rights such Person has with respect to any Note Party under this Agreement or any other Note Document.

Section 10.17 **Captions.** Captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

Section 10.18 **First Lien Agent as Bailee.** Notwithstanding any other provision hereof or of any other Note Document, at all times prior to the "Discharge of First Lien Obligations" (as defined in the First Lien/Second Lien Intercreditor Agreement) and so long as the Note Documents (as defined in the First Lien Note Purchase Agreement) shall require the delivery of possession or control to the First Lien Collateral Agent, or shall require the granting of a first priority Lien on Collateral in favor of the First Lien Collateral Agent, any covenant hereunder or thereunder requiring the delivery of possession or control to the Collateral Agent of Collateral shall be deemed to have been satisfied if, prior to the "Discharge of First Lien Obligations" (other than "Excess First Lien Obligations") (as such terms are defined in the First Lien/Second Lien Intercreditor Agreement), such possession or control shall have been delivered to or given in favor of the First Lien Collateral Agent (or its agents or bailees), as provided in the First Lien/Second Lien Intercreditor Agreement, or such first priority lien on such Collateral shall have been granted to the First Lien Collateral Agent and a second priority lien on such Collateral shall have been granted to the Collateral Agent, in each case, subject to Permitted Encumbrances and Specified Permitted Liens. To the extent any such possessory Collateral shall be delivered to or be controlled by the Collateral Agent (or its agents or bailees), subject to the terms of the First Lien/Second Lien Intercreditor Agreement and solely for the purpose of perfecting the security interest granted in such possessory Collateral, the Collateral Agent agrees to hold any such possessory Collateral as a gratuitous bailee for the benefit of the First Lien Collateral Agent. The representations and warranties of the Note Parties contained in the Note Documents representing or warranting that the Lien in favor of the Collateral Agent under any Note Document is a first priority lien shall be deemed to be modified mutatis mutandis to take into account the foregoing provisions of this paragraph and the agreements set forth in the First Lien/Second Lien Intercreditor Agreement.

Section 10.19 **Acknowledgement and Consent to Bail-In of EEA Financial Institutions.** Notwithstanding anything to the contrary in any Note Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Note Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Note Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

Section 10.20 **Force Majeure**. In no event shall the Collateral Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Collateral Agent shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 10.21 **Issue Price Allocation**. The Issuer and the Purchasers acknowledge and agree that the Warrants shall be treated as part of an "investment unit" as defined in Section 1273(c)(2) of the Internal Revenue Code of 1986 (the "Code"). In furtherance of such treatment, the "issue price" for the Initial Notes and the Warrants shall be allocated between the Initial Notes and the Warrants as set forth on Schedule 10.21.

(remainder of page left intentionally 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.

BIOSCRIP, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

WELLS FARGO BANK, NATIONAL ASSOCIATION
as the Collateral Agent

By: /s/ Michael Pinzon
Name: Michael Pinzon
Title: Vice President

Address for Notices:

Wells Fargo Bank, National Association
9062 Old Annapolis Road
Columbia, Maryland 21045
Attention: Jason Prisco – BioScrip, Inc. Second Lien NPA
Email: CRSBankDebtAdministrationTeam@wellsfargo.com

ASSF IV AIV B HOLDINGS, L.P.
as a Purchaser

By: ASSF IV AIV B Holdings GP LLC, its general partner

By: ASSF IV AIV B, L.P., its sole member

By: ASSF Management IV, L.P., its general partner

By: ASSF Management IV GP LLC, its general partner

By: /s/ Scott L. Graves
Name: Scott L. Graves
Title: Authorized Signatory

Address for Notices:

ASSF IV AIV B Holdings, L.P.
c/o Ares Management LLC
2000 Avenue of the Stars, 12th Floor
Los Angeles, CA 90067

Funding Office:

c/o Ares Management LLC
2000 Avenue of the Stars, 12th Floor
Los Angeles, CA 90067

J.P. MORGAN SECURITIES LLC
as a Purchaser

By: /s/ Jeffrey L. Panzo
Name: Jeffrey L. Panzo
Title: Attorney in fact

Address for Notices:

J.P. Morgan Securities LLC
4 New York Plaza, 15th Floor, Mail Code NY1-E054
New York, New York 10004
Attention: Jeffrey L. Panzo
Email: Jeffrey.L.Panzo@JPMorgan.com
Phone No.: (212) 499-1435

Funding Office:

JPMorgan Chase Bank, N.A.
4 New York Plaza, 15th Floor
New York, New York 10004

GOLDMAN SACHS & CO. LLC
as a Purchaser

By: /s/ Daniel Oneglia
Name: Daniel Oneglia
Title: Managing Director

Address for Notices:

Goldman Sachs & Co. LLC
200 West Street, 26th Floor
Attn: Paul Burningham
New York, New York 10282

Funding Office:

Goldman Sachs & Co. LLC
200 West Street, 26th Floor
Attn: Paul Burningham and Paige Cataruozolo
New York, New York 10282
Email: ficc-amssg-mo@gs.com
Phone No.: (917) 343-8393 (Paul Burningham), (917) 343-3096 (Paige Cataruozolo)

WESTERN ASSET MIDDLE MARKET DEBT FUND INC.
WESTERN ASSET MIDDLE MARKET INCOME FUND INC
each as a Purchaser

By: Western Asset Management Company, as its Investment Manager and Agent

By: /s/ Adam Wright
Name: Adam Wright
Title: Manager, U.S. Legal Affairs

Address for Notices:

Western Asset Management Company
385 East Colorado Boulevard
Pasadena, California 91101
Attention: Legal Department

Funding Office:

Western Asset Management Company
385 East Colorado Boulevard
Pasadena, California 91101

SCHEDULE II

Competitors

CVS/Coram
OptionCare
Axelacare/UHC

Exhibit 10.4

EXECUTION VERSION

SECOND LIEN GUARANTY AND SECURITY AGREEMENT

dated as of June 29, 2017

made by

BIOSCRIP, INC.
as Issuer

and

THE OTHER GRANTORS FROM TIME TO TIME PARTY HERETO

in favor of

WELLS FARGO BANK, NATIONAL ASSOCIATION
as Collateral Agent

AS SET FORTH MORE FULLY IN SECTION 10.20 HEREOF, THIS SECOND LIEN GUARANTY AND SECURITY AGREEMENT IS SUBJECT TO THE PROVISIONS OF THE FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT, THE ABDC INTERCREDITOR AGREEMENT AND EACH OTHER INTERCREDITOR AGREEMENT ENTERED INTO BY THE COLLATERAL AGENT WITH RESPECT TO THE SECURED OBLIGATIONS

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SECOND LIEN GUARANTY AND SECURITY AGREEMENT

THIS SECOND LIEN GUARANTY AND SECURITY AGREEMENT, dated as of June 29, 2017, is made by BIOSCRIP, INC., a Delaware corporation (the "Issuer"), and certain Subsidiaries of the Issuer identified on the signature pages hereto as "Guarantors" (together with the Issuer and any other Subsidiary of the Issuer that becomes a party hereto from time to time after the date hereof, each, a "Grantor" and, collectively, the "Grantors"), in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, as collateral agent (in such capacity, together with its successors and assigns, the "Collateral Agent") for itself and the other Secured Parties (as defined below).

WHEREAS, the Issuer is entering into that certain Second Lien Note Purchase Agreement dated as of the date hereof (as amended, restated, supplemented, or otherwise modified from time to time, the "Note Purchase Agreement") by and among the Issuer, the purchasers from time to time party thereto (collectively, the "Purchasers") and the Collateral Agent, providing for, among other things, the issuance by the Issuer and the purchase by the Purchasers of the Notes, subject to the terms set forth therein;

WHEREAS, it is a condition precedent to the obligations of the Purchasers and the Collateral Agent under the Note Documents that the Grantors enter into this Agreement, pursuant to which, subject to the terms and conditions herein, the Grantors (other than the Issuer) shall guaranty all Obligations of the Issuer and the Grantors (including the Issuer) shall grant Liens on substantially all of their personal property to the Collateral Agent, on behalf of the Secured Parties, to secure the Grantors' respective Obligations; and

WHEREAS, the Grantors have acknowledged and agreed to that certain Intercreditor Agreement, dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "First Lien/Second Lien Intercreditor Agreement"), by and between Wells Fargo Bank, National Association, as first lien collateral agent (in such capacity, the "First Lien Collateral Agent") and the Collateral Agent, as second lien collateral agent, pursuant to which the Liens upon and security interests in the Collateral granted pursuant to this Agreement are and shall be subordinated in the manner provided in the First Lien/Second Lien Intercreditor Agreement to the Liens upon and security interests in the Collateral granted to secure the First Lien Obligations (as defined in the First Lien/Second Lien Intercreditor Agreement).

NOW, THEREFORE, in consideration of the premises and to induce the Collateral Agent and the Purchasers to enter into the Note Purchase Agreement and to induce the Purchasers to purchase the Notes pursuant thereto, each Grantor hereby agrees with the Collateral Agent, for the ratable benefit of the Secured Parties, as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions.

(a) Each term defined above shall have the meaning set forth above for all purposes of this Agreement. Unless otherwise defined herein, terms defined in the Note Purchase Agreement and used herein shall have the meanings assigned to such terms in the Note Purchase Agreement, and the terms "Account Debtor", "Account", "Cash Proceeds", "Certificated Security", "Chattel Paper", "Commercial Tort Claim", "Deposit Account", "Document", "Electronic Chattel Paper", "Equipment", "Fixture", "General Intangible", "Goods", "Instrument", "Inventory", "Investment Property", "Letter-of-Credit Right", "Noncash Proceeds", "Payment Intangible", "Proceeds", "Securities Account", "Security", "Security Entitlement", "Software", "Supporting Obligations", and "Tangible Chattel Paper" shall have the meanings assigned to such terms in the UCC as in effect in the State of New York on the date hereof:

(b) The following terms shall have the following meanings:

"Agreement" shall mean this Second Lien Guaranty and Security Agreement, as amended, restated, supplemented or otherwise modified from time to time.

"Avoidance Provisions" shall have the meaning set forth in Section 2.1(d).

"Bankruptcy Code" shall have the meaning set forth in Section 2.1(c)(i).

"Collateral" shall have the meaning set forth in Section 3.1.

"Copyright Licenses" shall mean any and all present and future agreements with respect to which a Grantor is a party providing for the granting of any right in or to Copyrights (whether the applicable Grantor is licensee or licensor thereunder).

"Copyrights" shall mean, collectively, with respect to each Grantor, all copyrights, whether registered or unregistered, owned by or assigned to such Grantor and all registrations and applications for the foregoing (whether by statutory or common law, whether established or registered in the United States, any State thereof, or any other country or any political subdivision thereof and, in each case, whether owned by or assigned to such Grantor), together with any and all (i) rights and privileges arising under applicable law with respect to such Grantor's use of any copyrights, (ii) extensions and renewals thereof and amendments thereto, (iii) 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, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present or future infringements thereof. As of the Closing Date, all Copyright registrations and applications of the Grantors are set forth on Schedule 9.

"Excluded Capital Stock" shall mean (i) any Capital Stock or Stock Equivalent of any Subsidiary of any Grantor that is not a wholly owned Subsidiary of such Grantor and of any joint venture, in each case, to the extent a pledge thereof is not permitted by the terms of such Person's organizational documents or joint venture documents (provided that such Grantor shall use commercially reasonable efforts to ensure that such organizational documents or joint venture documents permit a pledge of such Capital Stock or Stock Equivalent) and (ii) any Capital Stock of any Foreign Subsidiary owned by any Grantor in excess of 65% of the issued and outstanding voting Capital Stock of such Foreign Subsidiary; provided, that "Excluded Capital Stock" shall not include any proceeds, products, substitutions or replacements of Excluded Capital Stock (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Capital Stock).

"Excluded Property" shall mean (i) any fee-owned Real Estate with a fair market value of less than $2,500,000 (as of the date of the acquisition of such Real Estate) (provided that the fair market value of all fee-owned Real Estate constituting Excluded Property shall not exceed $5,000,000) and all Real Estate constituting leasehold interests; (ii) any motor vehicles and other assets subject to certificates of title to the extent that a security interest therein cannot be perfected by the filing of a UCC financing statement; (iii) any Letter-of-Credit Rights (except to the extent constituting a support obligation for other Collateral as to which the perfection of security interests in such other Collateral and the support obligation is accomplished solely by the filing of a UCC financing statement) and Commercial Tort Claims, in each case, with a value of less than $1,000,000; (iv) Excluded Capital Stock; (v) any license, Instrument, agreement or other General Intangible (other than Proceeds and Accounts thereof) to the extent, and so long as, the pledge thereof as Collateral would violate the terms thereof or result in a breach by any Grantor of any agreement related thereto, but only to the extent, and only for so long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the UCC, the Bankruptcy Code or any other Requirement of Law and such prohibition is not prohibited under Section 7.8 of the Note Purchase Agreement (provided, that such assets shall cease to be Excluded Property at such time as such prohibition or restriction is terminated, rendered unenforceable, or deemed ineffective or otherwise ceases to be in effect and, upon such prohibition or restriction being terminated, rendered unenforceable, deemed ineffective or otherwise ceasing to be in effect, the Lien granted herein shall be deemed to have automatically attached to such assets); (vi) Excluded Accounts; (vii) any United States intent-to-use trademark applications for which an amendment to allege use or statement of use has not been filed under 15 U.S.C. § 1051(c) or 15 U.S.C. § 1051(d), respectively, or if filed, has not been deemed in conformance with 15 U.S.C. § 1051(a) or examined and accepted, respectively, by the United States Patent and Trademark Office (provide that, upon such filing and acceptance, such intent-to-use applications shall cease to be Excluded Property); (viii) any other assets to the extent the pledge thereof is prohibited by any Requirement of Law (other than Proceeds and Accounts thereof), but only to the extent, and for so long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the UCC, the Bankruptcy Code or any other Requirement of Law (provided, that such assets shall cease to be Excluded Property at such time as such prohibition is terminated, rendered unenforceable, or deemed ineffective or otherwise ceases to be in effect and, upon such prohibition being terminated, rendered unenforceable, deemed ineffective or otherwise ceasing to be in effect, the Lien granted herein shall be deemed to have automatically attached to such assets); (ix) those assets of the Grantors as to which the Collateral Agent (at the direction of the Required Purchasers) shall reasonably determine that the costs of obtaining or perfecting such security interest are excessive in relation to the value of the security to the Secured Parties to be afforded thereby; and (x) such other assets of the Grantors as may be agreed by the Collateral Agent (at the direction of the Required Purchasers); provided, that "Excluded Property" shall not include any proceeds, products, substitutions or replacements of Excluded Property (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Property).

"First Lien Collateral Agent" shall have the meaning set forth in the recitals hereto.

"First Lien/Second Lien Intercreditor Agreement" shall have the meaning set forth in the recitals hereto.

"Guaranteed Obligations" shall have the meaning set forth in Section 2.1(a).

"Guarantors" shall mean, collectively, each Grantor other than the Issuer.

"Intellectual Property Licenses" shall mean any and all Trademark Licenses, Copyright Licenses and Patent Licenses.

"Intellectual Property Rights" shall mean any and all Trademarks, Copyrights, Patents, Software (including source code, object code, data and related documentation), internet domain names, trade secrets and other confidential business information and other intellectual property or proprietary rights.

"Patent Licenses" shall mean any and all present and future agreements with respect to which a Grantor is a party providing for the granting of any right in or to Patents (whether the applicable Grantor is licensee or licensor thereunder).

"Patents" shall mean, collectively, with respect to each Grantor, all letters patent owned by or issued or assigned to, and all patent applications and registrations made by, such Grantor (whether established or registered or recorded in the United States, or any other country or any political subdivision thereof and, in each case, whether owned by or assigned to such Grantor) and all (i) rights and privileges arising under applicable law with respect to such Grantor's use of any patents, (ii) inventions and improvements described and claimed therein, (iii) reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof and amendments thereto, and rights to obtain any of the foregoing, (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. As of the Closing Date, all Patents of the Grantors are set forth on Schedule 7.

"Pledged Certificated Stock" shall mean all Certificated Securities and any other Capital Stock or Stock Equivalent of any Person, other than Excluded Property, evidenced by a certificate, instrument or other similar document, in each case, now owned or at any time hereafter acquired by any Grantor, and any dividend or distribution of cash, instruments or other property made on, in respect of or in exchange for the foregoing from time to time. As of the Closing Date, all Pledged Certificated Stock of the Grantors is set forth on Schedule 2.

"Pledged Securities" shall mean, collectively, all Pledged Certificated Stock, all Pledged Uncertificated Stock and all Promissory Notes held by a Grantor and pledged to the Collateral Agent hereunder.

"Pledged Security Issuers" shall mean, collectively, each issuer of a Pledged Security.

"Pledged Uncertificated Stock" shall mean any Capital Stock or Stock Equivalent of any Person, other than Pledged Certificated Stock and Excluded Property, in each case now owned or at any time hereafter acquired by any Grantor, including all right, title and interest of any Grantor as a limited or general partner in any partnership or as a member of any limited liability company not constituting Pledged Certificated Stock, all right, title and interest of any Grantor in, to and under any organizational document of any partnership or limited liability company to which it is a party, and any dividend or distribution of cash, instruments, or other property made on, in respect of, or in exchange for the foregoing from time to time. As of the Closing Date, all Pledged Uncertificated Stock of the Grantors is set forth on Schedule 2.

"Promissory Note" shall mean an instrument within the description of "promissory note" as defined in Article 9 of the UCC.

"Secured Obligations" shall have the meaning set forth in Section 3.1.

"Secured Parties" shall mean, collectively, the Collateral Agent and the Purchasers.

"Securities Act" shall mean the Securities Act of 1933, as amended and in effect from time to time.

"Stock Equivalents" shall mean all Securities convertible into or exchangeable for Capital Stock or any other Stock Equivalent and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any Capital Stock or any other Stock Equivalent, whether or not presently convertible, exchangeable or exercisable.

"Termination Date" shall have the meaning set forth in Section 10.16(a).

"Trademark Licenses" shall mean any and all present and future agreements with respect to which a Grantor is a party providing for the granting of any right in or to Trademarks (whether the applicable Grantor is licensee or licensor thereunder).

"Trademarks" shall mean, collectively, with respect to each Grantor, all trademarks, service marks, slogans, logos, certification marks, trade dress, corporate names, trade names and other source or business identifiers, whether registered or unregistered, owned by or assigned to such Grantor and all registrations and applications for the foregoing (whether by statutory or common law, whether established or registered in the United States, any State thereof, or any other country or any political subdivision thereof and, in each case, whether owned by or assigned to such Grantor), and all goodwill associated therewith, now existing or hereafter adopted or acquired, together with any and all (i) rights and privileges arising under applicable law with respect to such Grantor's use of any trademarks, (ii) extensions and renewals thereof and amendments thereto, (iii) 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, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present or future infringements thereof. As of the Closing Date, all Trademark registrations and applications of the Grantors are set forth on Schedule 8.

"UCC" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York.

Section 1.2 Other Definitional Provisions; References. The definition 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, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (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, (d) all references herein to Articles, Sections, Exhibits, Schedules and Annexes shall, unless otherwise stated, be construed to refer to Articles and Sections of, and Exhibits, Schedules and Annexes to, this Agreement and (e) 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. Where the context requires, terms relating to the Collateral or any part thereof, when used in relation to a Grantor, shall refer to such Grantor's Collateral or the relevant part thereof. The words "knowledge of any Grantor" or any like term shall mean the actual knowledge of a Responsible Officer of any Grantor.

ARTICLE II

GUARANTEE

Section 2.1 Guarantee.

(a) Each Guarantor unconditionally guarantees, jointly with the other Guarantors and severally, as a primary obligor and not merely as a surety, (i) the due and punctual payment of all Obligations of the Issuer and the other Note Parties including (A) 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 Notes, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (B) 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 the Note Parties to the Collateral Agent and the Purchasers under the Note Purchase Agreement and the other Note Documents; and (ii) the due and punctual performance of all covenants, agreements, obligations and liabilities of the Note Parties under or pursuant to the Note Purchase Agreement and the other Note Documents (all the monetary and other obligations referred to in the preceding clauses (i) through (ii) being collectively called the "Guaranteed Obligations"). Each Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice to or further assent from such Guarantor and that such Guarantor will remain bound by its guarantee notwithstanding any extension or renewal of any Guaranteed Obligations made in accordance with the Note Purchase Agreement.

(b) Each Guarantor further agrees that its guarantee constitutes a joint and several obligation and a guarantee of payment when due and not of collection, and waives to the extent permitted by applicable law: (i) promptness and diligence, (ii) notice of acceptance and any other notice with respect to any of the Guaranteed Obligations under this Article II and any requirement that the Secured Parties exhaust any right or take any action against any Note Party or any other Person or any Collateral, (iii) any right to compel or direct any Secured Party to seek payment or recovery of any amounts owed under this Article II from any one particular fund or source or to exhaust any right or take any action against any other Note Party, any other Person or any Collateral and (iv) any requirement that any Secured Party exhaust any right to take any action against any Note Party, any other Person or any Collateral.

(c) It is the intent of each Guarantor and the Collateral Agent that the maximum obligations of the Guarantors hereunder shall be, but not in excess of:

(i) in a case or proceeding commenced by or against any Guarantor under the provisions of Title 11 of the United States Code, 11 U.S.C. §§101 et seq., as amended and in effect from time to time (the "Bankruptcy Code"), on or within one year from the date on which any of the Guaranteed Obligations are incurred, the maximum amount which would not otherwise cause the Guaranteed Obligations to be avoidable or unenforceable against such Guarantor under (A) Section 548 of the Bankruptcy Code or (B) any state fraudulent transfer or fraudulent conveyance act or statute applied in any such case or proceeding by virtue of Section 544 of the Bankruptcy Code; or

(ii) in a case or proceeding commenced by or against any Guarantor under the Bankruptcy Code subsequent to one year from the date on which any of the Guaranteed Obligations are incurred, the maximum amount which would not otherwise cause the Guaranteed Obligations to be avoidable or unenforceable against such Guarantor under any state fraudulent transfer or fraudulent conveyance act or statute applied in any such case or proceeding by virtue of Section 544 of the Bankruptcy Code; or

(iii) in a case or proceeding commenced by or against any Guarantor under any law, statute or regulation other than the Bankruptcy Code (including, without limitation, any other bankruptcy, reorganization, arrangement, moratorium, readjustment of debt, dissolution, liquidation or similar debtor relief laws), the maximum amount which would not otherwise cause the Guaranteed Obligations to be avoidable or unenforceable against such Guarantor under such law, statute or regulation, including, without limitation, any state fraudulent transfer or fraudulent conveyance act or statute applied in any such case or proceeding.

(d) The substantive laws under which the possible avoidance or unenforceability of the Guaranteed Obligations as may be determined in any case or proceeding shall hereinafter be referred to as the "Avoidance Provisions". To the extent set forth in subsections (c)(i), (ii) and (iii) of this Section, but only to the extent that the Guaranteed Obligations would otherwise be subject to avoidance or found unenforceable under the Avoidance Provisions, if any Guarantor is not deemed to have received valuable consideration, fair value or reasonably equivalent value for the Guaranteed Obligations, or if the Guaranteed Obligations would render such Guarantor insolvent, or leave such Guarantor with an unreasonably small capital to conduct its business, or cause such Guarantor to have incurred debts (or to have intended to have incurred debts) beyond its ability to pay such debts as they mature, in each case as of the time any of the Guaranteed Obligations are deemed to have been incurred under the Avoidance Provisions and after giving effect to the contribution rights set forth in Section 2.1(g) hereof and any other indemnifications payments due to such Guarantor by any other Guarantor, the maximum Guaranteed Obligations for which such Guarantor shall be liable hereunder shall be reduced to that amount which, after giving effect thereto, would not cause the Guaranteed Obligations, as so reduced, to be subject to avoidance or unenforceability under the Avoidance Provisions (such maximum amount, the "Allocable Amount").

(e) This Section is intended solely to preserve the rights of the Collateral Agent and the Secured Parties hereunder to the maximum extent that would not cause the Guaranteed Obligations of such Guarantor to be subject to avoidance or unenforceability under the Avoidance Provisions, and neither the Grantors nor any other Person shall have any right or claim under this Section as against the Collateral Agent or any Secured Party that would not otherwise be available to such Person under the Avoidance Provisions.

(f) Each Guarantor agrees that if the maturity of any of the Guaranteed Obligations is accelerated by bankruptcy or otherwise, such maturity shall also be deemed accelerated for the purpose of this guarantee without demand or notice to such Guarantor. The guarantee contained in this Article shall remain in full force and effect until the earlier of (i) the Termination Date and (ii) in respect of any Guarantor, the release of such Guarantor from this Agreement in accordance with the provisions of Section 10.16(b) hereof.

(g) To the extent that any Guarantor shall make a payment under this guarantee of all or any of the Guaranteed Obligations (a "Guarantor Payment") which, taking into account all other Guarantor Payments then previously or concurrently made by such Guarantor, exceeds the amount which such Guarantor would otherwise have paid if each Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion that such Guarantor's Allocable Amount (in effect immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of all of the Guarantors in effect immediately prior to the making of such Guarantor Payment, then, following payment in full of the Guaranteed Obligations (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made), such Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each of the other Guarantors for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment. This Section 2.1(g) is intended only to define the relative rights of Guarantors and nothing set forth in this Section 2.1(g) is intended to or shall impair the obligations of the Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Agreement.

Section 2.2 **Payments**. Each Guarantor hereby agrees and guarantees that payments hereunder will be paid to the Secured Parties without set-off or counterclaim in Dollars at the office or to the bank account of each such Secured Party provided for in the Note Purchase Agreement.

ARTICLE III

GRANT OF SECURITY INTEREST

Section 3.1 **Grant of Security Interest.** Each Grantor hereby pledges and grants to the Collateral Agent, for the ratable benefit of the Secured Parties, a security interest in and lien on all right, title and interest of such Grantor in all of the following property, wherever located and whether now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest and whether now existing or hereafter coming into existence (collectively, the "Collateral"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Obligations (collectively, the "Secured Obligations"):

(a) all Accounts, including, without limitation, all Accounts owing by any Governmental Authority (including, without limitation, any and all accounts arising or reimbursable under Medicare, Medicaid or any other Governmental Payor Arrangement), and Chattel Paper (whether tangible or electronic);

(b) all Commercial Tort Claims described on Schedule 10 hereto as such Schedule may be updated from time to time;

(c) all contracts together with all contract rights arising thereunder;

(d) all money, cash, cash equivalents, Deposit Accounts, Securities Accounts, commodities accounts and lockboxes and all money, cash, Securities and other Investment Property deposited therein;

(e) all Documents;

(f) all General Intangibles;

(g) all Goods (including, without limitation, all Inventory, all Equipment and all Fixtures);

(h) all Instruments;

(i) all Investment Property;

(j) all Letter-of-Credit Rights;

(k) all Notes (including, without limitation, all intercompany Notes) and all other intercompany obligations between the Note Parties;

(l) all Pledged Securities;

(m) all Intellectual Property Rights;

(n) all Intellectual Property Licenses;

(o) all books and records, Supporting Obligations and related letters of credit or other claims and causes of action, in each case to the extent pertaining to the Collateral; and

(p) to the extent not otherwise included, substitutions, replacements, accessions, products and other Proceeds (whether tangible or intangible and including, without limitation, insurance proceeds, licenses, royalties, income, payments, claims, damages, proceeds of suit, Cash Proceeds and Noncash Proceeds) of any or all of the foregoing and all collateral security, guarantees and other Supporting Obligations given with respect to any of the foregoing;

provided that, notwithstanding the foregoing, no Lien or security interest is hereby granted on, and the Collateral shall not include, any Excluded Property, and, to the extent that any Collateral later becomes Excluded Property, the Lien granted hereunder will automatically be deemed to have been released; provided, further, that if and when any property shall cease to be Excluded Property, a Lien on and security interest in such property shall automatically be deemed granted therein.

Section 3.2 Transfer of Pledged Securities. All certificates and instruments representing or evidencing the Pledged Certificated Stock shall be delivered to the Collateral Agent or a Person designated by the Collateral Agent (or, in accordance with Section 10.20, to the First Lien Collateral Agent or a Person designated by the First Lien Collateral Agent) in accordance with the terms of the Note Purchase Agreement and shall be held pursuant hereto by the Collateral Agent or a Person designated by the Collateral Agent (or, in accordance with Section 10.20, by the First Lien Collateral Agent or a Person designated by the First Lien Collateral Agent) and, in the case of an instrument or certificate in registered form, shall be duly indorsed to the Collateral Agent (or, in accordance with Section 10.20, to the First Lien Collateral Agent) or in blank by an effective endorsement (whether on the certificate or instrument or on a separate writing), and accompanied by any required transfer tax stamps to effect the pledge of the Pledged Securities to the Collateral Agent (or, in accordance with Section 10.20, to the First Lien Collateral Agent). Notwithstanding the preceding sentence, all Pledged Certificated Stock must be delivered or transferred in such manner, and each Grantor shall take all such further action as is necessary to permit the Collateral Agent to be a "protected purchaser" to the extent of its security interest as provided in Section 8-303 of the UCC.

Section 3.3 Grantors Remain Liable under Accounts, Chattel Paper and Payment Intangibles. Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each of the Accounts, Chattel Paper and Payment Intangibles owned or held by it to observe and perform all of the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise to each such Account, Chattel Paper or Payment Intangible. Neither the Collateral Agent nor any other Secured Party shall have any obligation or liability under any Account, Chattel Paper or Payment Intangible (or any agreement giving rise thereto) by reason of or arising out of this Agreement or the receipt by the Collateral Agent or any such other Secured Party of any payment relating to such Account, Chattel Paper or Payment Intangible pursuant hereto, nor shall the Collateral Agent or any other Secured Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Account, Chattel Paper or Payment Intangible (or any agreement giving rise thereto) to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any Account, Chattel Paper or Payment Intangible (or any agreement giving rise thereto), to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

ARTICLE IV

ACKNOWLEDGMENTS, WAIVERS AND CONSENTS

Section 4.1 Acknowledgments, Waivers and Consents

(a) Each Guarantor acknowledges and agrees that the obligations undertaken by it under this Agreement involve the guarantee of, and each Grantor acknowledges and agrees that the obligations undertaken by it under this Agreement involve the provision of security in the Collateral for, obligations of Persons other than such Grantor and that such Grantor's guarantee and provision of security in the Collateral for the Secured Obligations are absolute, irrevocable and unconditional under any and all circumstances (subject to the terms of this Agreement and the other Note Documents and subject to any Requirements of Law). Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated herein and in the Note Purchase Agreement and that the waivers set forth in clause (ii) below are knowingly made in contemplation of such benefits. In full recognition and furtherance of the foregoing, each Grantor understands and agrees, to the fullest extent permitted under applicable law and except as may otherwise be expressly and specifically provided in the Note Documents, that each Grantor shall remain obligated hereunder (including with respect to each Guarantor, the guarantee made by it herein and, with respect to each Grantor, the security in the Collateral provided by such Grantor herein), and the enforceability and effectiveness of this Agreement and the liability of such Grantor, and the rights, remedies, powers and privileges of the Collateral Agent and the other Secured Parties under this Agreement and the other Note Documents, shall not be affected, limited, reduced, discharged or terminated in any way and hereby agrees that:

(i) notwithstanding that, without any reservation of rights against any Grantor and without notice to or further assent by any Grantor, in each case, subject to and in accordance with the terms of the Note Documents, (A) any demand for payment of any of the Secured Obligations made by the Collateral Agent or any other Secured Party may be rescinded by the Collateral Agent or such other Secured Party and any of the Secured Obligations continued; (B) the Secured Obligations, the liability of any other Person upon or for any part thereof or any collateral security or guarantee therefor or right of offset with respect thereto may, from time to time, in whole or in part, be renewed, extended, amended, restated, modified, accelerated, compromised, waived, surrendered or released by, or any indulgence or forbearance in respect thereof granted by, the Collateral Agent or any other Secured Party; (C) the Note Purchase Agreement, the other Note Documents and all other documents executed and delivered in connection therewith may be amended, restated, modified, supplemented or terminated, in whole or in part, as the Collateral Agent (or the Required Purchasers, all Purchasers, or the other parties thereto, as the case may be) may deem advisable from time to time; (D) the Issuer, any Guarantor or any other Person may from time to time accept or enter into new or additional agreements, security documents, guarantees or other instruments in addition to, in exchange for or relative to any Note Document, all or any part of the Secured Obligations or any Collateral now or in the future serving as security for the Secured Obligations; (E) any collateral security, guarantee or right of offset at any time held by the Collateral Agent or any other Secured Party for the payment of the Secured Obligations may be sold, exchanged, waived, surrendered or released; and (F) any other event shall occur which constitutes a defense or release of sureties generally (other than a defense of payment or performance in full of all Guaranteed Obligations and Secured Obligations (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made)); and

(ii) regardless of, and each Grantor hereby expressly waives to the fullest extent permitted by law, any defense now or in the future arising by reason of, (A) the illegality, invalidity or unenforceability of the Note Purchase Agreement, any other Note Document, any of the Secured Obligations or any other security in the Collateral therefor or guarantee or right of offset with respect thereto at any time or from time to time held by the Collateral Agent or any other Secured Party (other than any such illegality, invalidity or unenforceability that occurs solely as a result of any action or inaction on the part of the Collateral Agent or any Purchaser); (B) any defense, set-off or counterclaim which may at any time be available to or be asserted by any Grantor or any other Person against the Collateral Agent or any other Secured Party; (C) the insolvency, bankruptcy arrangement, reorganization, adjustment, composition, liquidation, disability, dissolution or lack of corporate or other organizational power of any Grantor or any other Person at any time liable for the payment of all or part of the Secured Obligations or the failure of the Collateral Agent or any other Secured Party to file or enforce a claim in bankruptcy or other proceeding with respect to any Person, or any sale, lease or transfer of any or all of the assets of any Grantor, or any changes in the shareholders of any Grantor; (D) the fact that any Collateral or Lien contemplated or intended to be given, created or granted as security for the repayment of the Secured Obligations shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other Lien (other than solely as a result of any action or inaction on the part of the Collateral Agent or any Purchaser), it being recognized and agreed by each of the Grantors that it is not entering into this Agreement in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectability or value of any of the Collateral for the Secured Obligations; (E) any failure of the Collateral Agent or any other Secured Party to marshal assets in favor of any Grantor or any other Person, to exhaust any Collateral for all or any part of the Secured Obligations, to pursue or exhaust any right, remedy, power or privilege it may have against any Grantor or any other Person or to take any action whatsoever to mitigate or reduce any Grantor's liability under this Agreement or any other Note Document; (F) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation (but subject to Section 2.1(c)-(g) hereof); (G) the possibility that the Secured Obligations may at any time and from time to time exceed the aggregate liability of such Grantor under this Agreement; (H) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from any Note Document, including, without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Note Party or otherwise; or (I) any other circumstance or act whatsoever, including any action or omission of the type described in subsection (a)(i) of this Section (with or without notice to or knowledge of any Grantor), which constitutes, or might be construed to constitute, an equitable or legal discharge or defense of the Issuer for the Obligations, or of such Guarantor under the guarantee contained in Article II, or with respect to the collateral security provided by such Grantor herein, or which might be available to a surety or guarantor, in bankruptcy or in any other instance (other than, in the case of clauses (A) through (I) hereof, (x) a defense of payment or performance in full of all Guaranteed Obligations and Secured Obligations (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made) or (y) a defense that an Event of Default has not occurred under the Note Purchase Agreement or any other Note Document).

(b) Each Grantor hereby waives to the extent permitted by law and, in each case, except as expressly provided otherwise in any Note Document, (i) all notices to such Grantor, or to any other Person, including, but not limited to, notices of the acceptance of this Agreement, the guarantee contained in Article II or the provision of security in the Collateral provided herein, or the creation, renewal, extension, modification or accrual of any Secured Obligations, or notice of or proof of reliance by the Collateral Agent or any other Secured Party upon the guarantee contained in Article II or upon the security in the Collateral provided herein, or of default in the payment or performance of any of the Secured Obligations owed to the Collateral Agent or any other Secured Party and enforcement of any right or remedy with respect thereto, or notice of any other matters relating thereto; the Secured Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in Article II and the security in the Collateral provided herein and no notice of creation of the Secured Obligations or any extension of credit already or hereafter contracted by or extended to the Issuer need be given to any Grantor, and all dealings between the Issuer and any of the Grantors, on the one hand, and the Collateral Agent and the other Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in Article II and on the security in the Collateral provided herein; (ii) diligence and demand of payment, presentment, protest, dishonor and notice of dishonor; (iii) any statute of limitations affecting any Grantor's liability hereunder or the enforcement thereof; (iv) all rights of revocation with respect to the Secured Obligations, the guarantee contained in Article II and the provision of security in the Collateral herein and acknowledges that Article II and the provision of security in the Collateral herein is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future; and (v) all principles or provisions of law which conflict with the terms of this Agreement and which can, as a matter of law, be waived.

(c) When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Grantor, the Collateral Agent or any other Secured Party may, but shall be under no obligation to, join or make a similar demand on or otherwise pursue or exhaust such rights and remedies as it may have against the Issuer, any other Grantor or any other Person or against any collateral security or guarantee for the Secured Obligations or any right of offset with respect thereto, and any failure by the Collateral Agent or any other Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from the Issuer, any other Grantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Issuer, any other Grantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Grantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Collateral Agent or any other Secured Party against any Grantor. For the purposes hereof, "demand" shall include the commencement and continuance of any legal proceedings. Neither the Collateral Agent nor any other Secured Party shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Secured Obligations or for the guarantee contained in Article II or any property subject thereto.

Section 4.2 No Subrogation, Contribution or Reimbursement. Until all Secured Obligations are satisfied in full (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made) and all Commitments and Delayed Draw Commitments of each Purchaser under the Note Purchase Agreement or any other Note Document have been terminated, notwithstanding any payment made by any Grantor hereunder or any set-off or application of funds of any Grantor by the Collateral Agent or any other Secured Party, each Grantor's right of subrogation to any of the rights of the Collateral Agent or any other Secured Party against the Issuer or any other Grantor or any collateral security or guarantee or right of offset held by the Collateral Agent or any other Secured Party for the payment of the Secured Obligations shall be subordinated, and no Grantor shall seek or be entitled to seek any indemnity, exoneration, participation, contribution or reimbursement from the Issuer or any other Grantor in respect of payments made by such Grantor hereunder, and each Grantor hereby expressly agrees not to exercise any or all such rights of subrogation, reimbursement, indemnity and contribution until the payment in full in cash of the Secured Obligations (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made). Each Grantor further agrees that to the extent that such waiver and release set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement, indemnity and contribution such Grantor may have against the Issuer or any other Grantor or against any collateral or security or guarantee or right of offset held by the Collateral Agent or any other Secured Party shall be junior and subordinate to any rights the Collateral Agent and the other Secured Parties may have against the Issuer and such Grantor and to all right, title and interest the Collateral Agent and the other Secured Parties may have in such collateral or security or guarantee or right of offset. In accordance with the terms hereof, the Collateral Agent, for the benefit of the Secured Parties, may use, sell or dispose of any item of Collateral or security as it sees fit without regard to any subrogation rights any Grantor may have, and upon any disposition or sale of such Collateral by the Collateral Agent in accordance with the terms hereof, any rights of subrogation any Grantor may have that specifically attach to such Collateral shall terminate.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

To induce the Collateral Agent and the other Secured Parties to enter into the Note Purchase Agreement and the other Note Documents and to induce the Purchasers to purchase the Notes pursuant to the Note Purchase Agreement, each Grantor represents and warrants to the Collateral Agent and each other Secured Party as follows:

Section 5.1 Confirmation of Representations in Note Purchase Agreement. Each Guarantor represents and warrants to the Secured Parties that the representations and warranties set forth in Article IV of the Note Purchase Agreement that specifically relate to such Guarantor (in its capacity as a Note Party or a Subsidiary of the Issuer, as the case may be) are true and correct in all material respects (or if already qualified by materiality or Material Adverse Effect, in all respects); provided that each reference in each such representation and warranty to the Issuer's knowledge shall, for the purposes of this Section, be deemed to be a reference to such Guarantor's knowledge.

Section 5.2 Benefit to the Guarantors. As of the Closing Date, the Issuer is a member of an affiliated group of companies that includes each Guarantor, and the Issuer and the Guarantors are engaged in related businesses permitted pursuant to Section 5.3 of the Note Purchase Agreement. Each Guarantor is a Subsidiary of the Issuer, and the guaranty and surety obligations of each Guarantor pursuant to this Agreement reasonably may be expected to benefit, directly or indirectly, such Guarantor; and each Guarantor has determined that this Agreement is necessary and convenient to the conduct and promotion of the business of such Guarantor and the Issuer.

Section 5.3 Pledged Securities; Promissory Notes. As of the Closing Date, Schedule 2 correctly sets forth (a) all duly authorized, issued and outstanding Capital Stock of each Guarantor and each other Person that is beneficially owned by each Grantor and (b) all Notes held by each Grantor, in each case on the Closing Date. No Pledged Security issued by a limited liability company or a limited partnership is a "Security" within the meaning of Article 8 of the UCC, unless such Pledged Security is evidenced by a certificate.

Section 5.4 Priority of Liens. The Liens granted to the Collateral Agent, for the benefit of the Secured Parties, pursuant to this Agreement shall be valid, fully perfected Liens on, and security interests in, all right, title and interest of the Grantors in the Collateral and the proceeds thereof, as security for the Secured Obligations, prior to and superior to any other Person (except for Specified Permitted Liens) upon the occurrence of the following with respect to such Collateral: (i) in the case of Pledged Certificated Stock, when certificates representing such Pledged Certificated Stock together with transfer powers thereto are delivered to the Collateral Agent or its designee (or, in accordance with Section 10.20, to the First Lien Collateral Agent or its designee), (ii) in the case of deposit accounts (other than Excluded Accounts) or Investment Property, when an Account Control Agreement is executed and delivered by all parties thereto with respect to such deposit accounts or Investment Property, (iii) (x) in the case of Copyrights, when the filings in subsection (iv) of this Section are made and when, if applicable, the Copyright Security Agreements in the form attached hereto as Annex II are filed in the United States Copyright Office, and (y) in the case of Trademarks or Patents, when the filings in subsection (iv) of this Section are made and when, if applicable, the Trademark Security Agreements or the Patent Security Agreements, as applicable, in the form attached hereto as Annex II are filed in the United States Patent and Trademark Office and (iv) in the case of the other Collateral described in this Agreement in which a Lien may be perfected by the filing of a financing statement, when UCC financing statements are filed in the appropriate filing offices as specified in Article 9 of the UCC (which, as of the Closing Date, for each of the Grantors is the filing office set forth for each Grantor on Schedule 3).

Section 5.5 **Legal Name, Organizational Status, Chief Executive Office.** As of the Closing Date, the correct legal name of such Grantor, such Grantor's jurisdiction of organization, organizational identification number (if any), federal taxpayer identification number and the location of such Grantor's chief executive office or sole place of business are specified on Schedule 4.

Section 5.6 **Prior Names, Prior Chief Executive Offices.** Schedule 5 correctly sets forth (a) all names and trade names that such Grantor has used in the five years preceding the Closing Date and (b) each chief executive office of such Grantor in the five years preceding the Closing Date (if different from that which is set forth in Schedule 4); provided that, with respect to any Grantor that was acquired during such five-year period preceding the Closing Date, the information set forth on Schedule 5 hereto shall be correct to the best of such Grantor's knowledge.

Section 5.7 **Chattel Paper.** No Collateral constituting Chattel Paper in excess of $1,000,000 or Instruments contains any statement therein to the effect that such Collateral has been assigned to an identified party other than the Collateral Agent (or, in accordance with Section 10.20, to the First Lien Collateral Agent), and the grant of a security interest in such Collateral in favor of the Collateral Agent hereunder does not violate the rights of any other Person as a secured party.

Section 5.8 **Truth of Information; Accounts.** All written information with respect to the Collateral set forth in any schedule, certificate or other writing (other than the Profit Plans and other forward-looking information (which shall be subject solely to the representation set forth in the last sentence of Section 4.4(a) of the Note Purchase Agreement), information regarding third parties and general economic or industry information) furnished by or on behalf of such Grantor to the Collateral Agent or any other Secured Party (as modified or supplemented by any other information so furnished), is or will be, when furnished and taken as a whole, complete and correct in all material respects and does not or will not, when furnished and taken as a whole, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made. As of the Closing Date, the locations where each Grantor keeps its books and records concerning any Accounts, Chattel Paper and Payment Intangibles that constitute Collateral are set forth on Schedule 6.

Section 5.9 **Governmental Obligors.** Except as disclosed to the Collateral Agent from time to time, none of the Account Debtors on such Grantor's Accounts, Chattel Paper or Payment Intangibles is a Governmental Authority, except to the extent such Accounts, Chattel Paper or Payment Intangibles have an aggregate value of less than $1,000,000 at any time outstanding.

Section 5.10 **Intellectual Property Rights.** Schedule 7 sets forth all Patents and Patent Licenses owned by such Grantor as of the Closing Date; Schedule 8 sets forth all registered Trademarks and Trademark Licenses owned by such Grantor as of the Closing Date; and Schedule 9 sets forth all registered Copyrights and Copyright Licenses owned by such Grantor as of the Closing Date, in each of the foregoing cases, excluding commercially available software and non-exclusive licenses granted by or, to the extent such licenses are not material to the business of such Grantor, to such Grantor in the ordinary course of business. To the best of each such Grantor's knowledge, each such Patent, Trademark and Copyright is valid, subsisting, unexpired and enforceable and has not been abandoned. Except as set forth in any such Schedule and any non-exclusive licenses made in the ordinary course of business, none of such Patents, Trademarks and Copyrights is the subject of any licensing or franchise agreement. Except for the regular course of prosecution, (a) no holding, decision or judgment has been rendered by any Governmental Authority which would limit, cancel or question the validity of any such Patent, Trademark or Copyright and (b) no action or proceeding is pending (i) seeking to limit, cancel or question the validity of any such Patent, Trademark or Copyright, or (ii) which, if adversely determined, would have a material adverse effect on the value of any such Patent, Trademark or Copyright. Each Grantor owns all material Intellectual Property Rights purported to be owned by such Grantor free and clear of any Liens, other than Liens permitted by Section 7.2 of the Note Purchase Agreement. The Intellectual Property Rights owned by each Grantor do not infringe or otherwise violate any intellectual property or other proprietary rights of any other Person in a manner that could result in a materially adverse claim. There is no action pending or, to the best of such Grantor's knowledge, threatened in writing, alleging any such infringement or violation or challenging such Grantor's rights in or to any such Intellectual Property Rights. To the best of each Grantor's knowledge, no Person is infringing or otherwise violating any Intellectual Property Rights owned by such Grantor or any rights of such Grantor in, to or under any Intellectual Property Licenses.

ARTICLE VI

COVENANTS

Each Grantor covenants and agrees with the Collateral Agent and the other Secured Parties that, so long as any Purchaser has a Commitment or a Delayed Draw Commitment under the Note Purchase Agreement or any Secured Obligation remains unpaid or outstanding (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made):

Section 6.1 **Covenants in Note Purchase Agreement.** In the case of each Guarantor, such Guarantor shall take, or shall refrain from taking, as the case may be, each action that is necessary to be taken or not taken, as the case may be, so that no Default or Event of Default is caused by the failure to take such action or to refrain from taking such action by such Guarantor or any of its Subsidiaries.

Section 6.2 **Maintenance of Perfected Security Interest; Further Documentation**.

(a) Such Grantor shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 5.4 and shall defend such security interest against the claims and demands of all Persons whomsoever, except for Liens permitted by Section 7.2 of the Note Purchase Agreement.

(b) Such Grantor will execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, Mortgages and other documents), which may be required under any applicable law, or which the Collateral Agent or the Required Purchasers may reasonably request, to effectuate the transactions contemplated by the Note Documents or to grant, preserve, protect or perfect the Liens created by this Agreement and the other Collateral Documents or the validity or priority of any such Lien, all at the expense of the Grantors, including executing and delivering (i) with regard to Copyright registrations and applications, a Copyright Security Agreement substantially in the form of Annex II to this Agreement for filing with the United States Copyright Office, (ii) with regard to Patents, a Patent Security Agreement substantially in the form of Annex II to this Agreement for filing with the United States Patent and Trademark Office and (iii) with regard to Trademark registrations and applications, a Trademark Security Agreement substantially in the form of Annex II to this Agreement for filing with the United States Patent and Trademark Office. Such Grantor also agrees to provide to the Collateral Agent and the Purchasers, from time to time upon request, evidence reasonably satisfactory to the Collateral Agent or the Required Purchasers, as applicable, as to the perfection and priority of the Liens created or intended to be created by this Agreement and the other Collateral Documents.

(c) Without limiting the obligations of the Grantors under subsection (b) of this Section, (i) upon the reasonable request of the Collateral Agent or the Required Purchasers, such Grantor shall take or cause to be taken all actions (other than any actions required to be taken by the Collateral Agent) reasonably requested by the Collateral Agent or the Required Purchasers to cause the Collateral Agent (or, in accordance with Section 10.20, the First Lien Collateral Agent) to (A) have "control" (within the meaning of Sections 9-104, 9-105, 9-106, and 9-107 of the UCC) over any Collateral constituting Deposit Accounts, Electronic Chattel Paper, Investment Property (including the Pledged Securities), or Letter-of-Credit Rights, including, without limitation, executing and delivering any agreements, in form and substance reasonably satisfactory to the Collateral Agent and the Required Purchasers, with securities intermediaries, issuers or other Persons in order to establish "control", and each Grantor shall promptly notify the Collateral Agent and the other Secured Parties of such Grantor's acquisition of any such Collateral, and (B) be a "protected purchaser" (as defined in Section 8-303 of the UCC); (ii) with respect to Collateral other than Pledged Certificated Stock and Goods covered by a Document in the possession of a Person other than such Grantor, the Collateral Agent (or any designee of the Collateral Agent) or any other Secured Party, such Grantor shall use its commercially reasonable efforts to obtain written acknowledgment that such Person holds possession for the Collateral Agent's benefit; and (iii) with respect to any Collateral constituting Goods with a value in excess of $1,000,000 that are in the possession of a bailee, such Grantor shall provide prompt notice to the Collateral Agent and the other Secured Parties of any such Collateral then in the possession of such bailee, and such Grantor shall take or cause to be taken all actions (other than any actions required to be taken by the Collateral Agent or any other Secured Party or any action required to be taken by such bailee) necessary or reasonably requested by the Collateral Agent or the Required Purchasers to cause the Collateral Agent to have a perfected security interest in such Collateral under applicable law.

Section 6.3 Maintenance of Records. Such Grantor will keep and maintain at its own cost and expense proper books and records with respect to the Collateral, including, without limitation, a record of all payments received and all credits granted with respect to the Accounts comprising any part of the Collateral. For the Collateral Agent's and the other Secured Parties' further security, the Collateral Agent, for the ratable benefit of the Secured Parties, shall have a security interest in all of such Grantor's books and records pertaining to the Collateral.

Section 6.4 Right of Inspection. Such Grantor will permit any representative of the Collateral Agent or any Purchaser to visit and inspect its properties, to examine its books and records and to make copies and take extracts therefrom, and to discuss its affairs, finances and accounts with any of its officers and with its independent certified public accountants (provided that such Grantor is provided reasonable prior notice of any discussion with its auditors or accountants and is afforded an opportunity to participate in such discussions), all at such reasonable times and subject to reasonable prior notice to such Grantor; provided that, so long as no Event of Default has occurred and is continuing, visits and inspections under this Section 6.4 shall be limited to one time per Fiscal Year for the Collateral Agent and all of the Purchasers. Any Related Party of the Collateral Agent or any Secured Party that attends or participates in any such visit or inspection shall, prior to such attendance or participation, expressly agree to be subject to and bound by the confidentiality provisions of the Note Purchase Agreement or shall otherwise be bound by professional ethics rules to maintain such confidentiality.

Section 6.5 **Further Identification of Collateral.** Such Grantor will furnish to the Collateral Agent from time to time (but no more than two (2) times during any twelve month period when no Event of Default has occurred and is continuing), at such Grantor's sole cost and expense, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Collateral Agent or the Required Purchasers may reasonably request, all in reasonable detail.

Section 6.6 **Changes in Names, Locations.** Such Grantor recognizes that financing statements pertaining to the Collateral have been or may be filed where such Grantor is organized. Without limitation of any other covenant herein, such Grantor will not cause or permit (i) any change to be made in its legal name, identity or corporate, limited liability company, or limited partnership structure or (ii) any change to (A) the identity of any warehouseman, common carrier, other third party transporter, bailee or any agent or processor in possession or control of any Collateral with a value in excess of $1,000,000 or (B) such Grantor's jurisdiction of organization, unless such Grantor shall have first (1) notified the Collateral Agent and the Purchasers of such change at least 30 days prior to the date of such change, and (2) taken all action necessary and/or reasonably requested by the Collateral Agent or any other Secured Party for the purpose of maintaining the perfection and priority of the Collateral Agent's security interests under this Agreement, and unless such Grantor shall otherwise be in compliance with Section 7.3 of the Note Purchase Agreement. In any notice furnished pursuant to this Section, such Grantor will expressly state in a conspicuous manner that the notice is required by this Agreement and contains facts that may require additional filings of financing statements or other notices for the purposes of continuing perfection of the Collateral Agent's security interest in the Collateral.

Section 6.7 **Pledged Securities**.

(a) If such Grantor shall become entitled to receive or shall receive any Promissory Notes, stock certificate or other instrument (including, without limitation, any certificate or instrument representing a dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate or instrument issued in connection with any reorganization), option or rights in respect of the Capital Stock of any Pledged Security Issuer, whether in addition to, in substitution of, as a conversion of, or in exchange for, any shares (or such other interests) of the Pledged Securities, or otherwise in respect thereof, except as otherwise provided herein or in the Note Purchase Agreement, such Grantor shall accept the same for the benefit of the Collateral Agent, hold the same on behalf of and for the benefit of the Collateral Agent and deliver the same forthwith to the Collateral Agent (or, in accordance with Section 10.20, to the First Lien Collateral Agent) in the exact form received, duly indorsed by such Grantor to the Collateral Agent (or, in accordance with Section 10.20, to the First Lien Collateral Agent), if required, together with an undated stock power or other equivalent instrument of transfer reasonably acceptable to the Collateral Agent and the Required Purchasers covering such certificate or instrument duly executed in blank by such Grantor and with, if the Collateral Agent so requests, signature guaranteed, to be held by the Collateral Agent (or, in accordance with Section 10.20, by the First Lien Collateral Agent), subject to the terms hereof, as additional collateral security for the Secured Obligations.

(b) Without the prior written consent of the Required Purchasers, except to the extent permitted by the Note Purchase Agreement (or pursuant to or in connection with a transaction permitted by the Note Purchase Agreement), such Grantor will not (i) vote to enable, or take any other action to cause, any Pledged Security Issuer to issue any Capital Stock or to issue any other securities or interests convertible into or granting the right to purchase or exchange for any Capital Stock of any Pledged Security Issuer (unless such Grantor complies with the terms of the Note Documents with respect to any such additional issuance), (ii) sell, assign, transfer, exchange or otherwise dispose of, or grant any option with respect to, the Pledged Securities or Proceeds thereof, (iii) create, incur or permit to exist any Lien or option in favor of, or any claim of any Person with respect to, any of the Pledged Securities or Proceeds thereof, or any interest therein, or (iv) enter into any agreement or undertaking restricting the right or ability of such Grantor or the Collateral Agent to sell, assign or transfer any of the Pledged Securities or Proceeds thereof.

(c) In the case of each Grantor which is a Pledged Security Issuer, and each other Pledged Security Issuer that executes the Acknowledgment and Consent in the form of Annex III (which the applicable Grantor shall use its commercially reasonable efforts to obtain from each such other Pledged Security Issuer), such Pledged Security Issuer agrees that (i) it will be bound by the terms of this Agreement relating to the Pledged Securities issued by it and will comply with such terms insofar as such terms are applicable to it, (ii) it will notify the Collateral Agent promptly in writing of the occurrence of any of the events described in subsection (a) of this Section with respect to the Pledged Securities issued by it and (iii) the terms of Section 7.1(c) and Section 7.5 shall apply to it, *mutatis mutandis*, with respect to all actions that may be required of it pursuant to Section 7.1(c) or Section 7.5 with respect to the Pledged Securities issued by it.

(d) Such Grantor shall furnish to the Collateral Agent (or, in accordance with Section 10.20, to the First Lien Collateral Agent) such powers and other equivalent instruments of transfer as may be reasonably required by the Collateral Agent or the Required Purchasers and/or is necessary to assure the transferability of and the perfection of the security interest in the Pledged Securities when and as often as may be reasonably requested by the Collateral Agent or the Required Purchasers.

(e) Each Grantor acknowledges and agrees that, to the extent any interest in any limited liability company or limited partnership constituting Pledged Securities hereunder is a "Security" within the meaning of Article 8 of the UCC and is governed by Article 8 of the UCC, such interest shall be represented by a certificate. Each Grantor further acknowledges and agrees that with respect to any interest in any limited liability company or limited partnership constituting Pledged Securities hereunder that is not a "Security" within the meaning of Article 8 of the UCC, such Grantor shall at no time elect to treat any such interest as a "Security" within the meaning of Article 8 of the UCC, unless such election and such interest is thereafter represented by a certificate that is promptly delivered to the Collateral Agent (or, in accordance with Section 10.20, to the First Lien Collateral Agent) pursuant to the terms hereof.

(f) If any Grantor acquires any Capital Stock or Stock Equivalents that do not constitute Excluded Capital Stock or any Promissory Notes after executing this Agreement, such Capital Stock, Stock Equivalents and Promissory Notes shall automatically constitute Collateral and, upon the reasonable request of the Collateral Agent or the Required Purchasers, such Grantor shall promptly deliver a revised Schedule 2 which shall replace the then existing Schedule 2 to this Agreement.

Section 6.8 Limitations on Modifications, Waivers, Extensions of Agreements Giving Rise to Accounts. Such Grantor will not (i) amend, modify, terminate or waive any provision of any Chattel Paper, Instrument or any agreement giving rise to an Account or Payment Intangible comprising a portion of the Collateral, or (ii) fail to exercise promptly and diligently each and every right which it may have under any Chattel Paper, Instrument and each agreement giving rise to an Account or Payment Intangible comprising a portion of the Collateral (other than any right of termination), except where such action or failure to act, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 6.9 **Instruments and Tangible Chattel Paper.** If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any Instrument or Tangible Chattel Paper and the value of such Instruments and Tangible Chattel Paper in the aggregate is $1,000,000 or more, each such Instrument or Tangible Chattel Paper shall be delivered to the Collateral Agent (or, in accordance with Section 10.20, to the First Lien Collateral Agent) as soon as practicable, duly endorsed in a manner reasonably satisfactory to the Collateral Agent and the Required Purchasers to be held as Collateral pursuant to this Agreement.

Section 6.10 **Copyrights, Patents and Trademarks**.

(a) Such Grantor (either itself or through licensees) will, except with respect to any Trademark that such Grantor shall reasonably determine is immaterial or as is permitted by Section 7.6 of the Note Purchase Agreement, (i) maintain as in the past the quality of services offered under such Trademark, (ii) maintain such Trademark in full force and effect, free from any claim of abandonment for non-use, (iii) employ such Trademark with the appropriate notice of registration, and (iv) not (and not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any Trademark may become abandoned or invalidated.

(b) Such Grantor will not, except with respect to any Patent that such Grantor shall reasonably determine is immaterial or as is permitted by Section 7.6 of the Note Purchase Agreement, do any act, or omit to do any act, whereby any Patent may become abandoned or dedicated.

(c) Such Grantor will not, except with respect to any Copyright that such Grantor shall reasonably determine is immaterial or as is permitted by Section 7.6 of the Note Purchase Agreement, do any act, or omit to do any act, whereby any Copyright may become abandoned or dedicated.

(d) Such Grantor will notify the Collateral Agent and the Purchasers promptly if it knows, or has reason to know, that any application or registration relating to any Copyright, Patent or Trademark may become abandoned, invalidated or dedicated (except with respect to any Copyright, Patent or Trademark that such Grantor shall reasonably determine is immaterial or as is permitted by Section 7.6 of the Note Purchase Agreement), or of any adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court or tribunal in any country) regarding such Grantor's ownership of any Copyright, Patent or Trademark or its right to register the same or to keep and maintain the same.

(e) Whenever a Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Copyright, Patent or Trademark with the United States Copyright Office, the United States Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof, such Grantor shall report such filing to the Collateral Agent and the Purchasers within five (5) Business Days after the last day of the fiscal quarter in which such filing occurs. Such Grantor shall within thirty (30) days execute and deliver an Intellectual Property Security Agreement substantially in the form of Annex II, and any and all other agreements, instruments, documents, and papers as are necessary to evidence the Collateral Agent's security interest in any such Copyright, Patent or Trademark and the goodwill and General Intangibles of such Grantor relating thereto or represented thereby.

(f) Such Grantor will take all reasonable and necessary steps, including, without limitation, in any proceeding before the United States Copyright Office, the United States Patent and Trademark Office, or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of the Copyrights, Patents and Trademarks, including, without limitation, filing of applications for renewal, affidavits of use and affidavits of incontestability.

(g) In the event that any Copyright, Patent or Trademark included in the Collateral is infringed, misappropriated or diluted by a third party, such Grantor shall promptly notify the Collateral Agent and the Purchasers after it learns thereof and shall, unless such Grantor shall reasonably determine that such Copyright, Patent or Trademark is immaterial to such Grantor, promptly take actions to remedy or address such infringement, misappropriation or dilution, including to seek injunctive relief where appropriate and to recover any and all damages for such infringement, misappropriation or dilution, or take such other actions as such Grantor shall reasonably deem appropriate under the circumstances to protect such Copyright, Patent or Trademark.

Section 6.11 **Commercial Tort Claims**. If such Grantor shall at any time hold or acquire a Commercial Tort Claim that satisfies the requirements of the following sentence, such Grantor shall, within 30 days after such Commercial Tort Claim satisfies such requirements, notify the Collateral Agent and the Purchasers in a writing signed by such Grantor containing a brief description thereof, and granting to the Collateral Agent (for the benefit of the Secured Parties) 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 and the Required Purchasers. The provisions of the preceding sentence shall apply only to a Commercial Tort Claim that satisfies the following requirements: (i) the monetary value claimed by or payable to the relevant Grantor in connection with such Commercial Tort Claim shall exceed $1,000,000, and (ii) either (A) such Grantor shall have filed a law suit or counterclaim or otherwise commenced legal proceedings (including, without limitation, arbitration proceedings) against the Person against whom such Commercial Tort Claim is made, or (B) such Grantor and the Person against whom such Commercial Tort Claim is asserted shall have entered into a settlement agreement with respect to such Commercial Tort Claim. In addition, to the extent that the existence of any Commercial Tort Claim held or acquired by any Grantor is disclosed by such Grantor in any public filing with the Securities Exchange Commission or any successor thereto or analogous Governmental Authority, or to the extent that the existence of any such Commercial Tort Claim is disclosed in any press release issued by any Grantor, then the relevant Grantor shall, within 30 days after such request is made, transmit to the Collateral Agent and the Purchasers a writing signed by such Grantor containing a brief description of such Commercial Tort Claim and granting to the Collateral Agent (for the benefit of the Secured Parties) 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 and the Required Purchasers.

ARTICLE VII

REMEDIAL PROVISIONS

Section 7.1 **Pledged Securities**.

(a) Unless an Event of Default shall have occurred and be continuing and the Collateral Agent (at the direction of the Required Purchasers) shall have given one (1) Business Day's prior written notice to the relevant Grantor of the Collateral Agent's intent to exercise its corresponding rights pursuant to subsection (b) of this Section, each Grantor shall be permitted to receive all cash dividends paid in respect of the Pledged Securities paid in the normal course of business of the relevant Pledged Security Issuer, to the extent permitted by the Note Purchase Agreement, and to exercise all voting and corporate rights with respect to the Pledged Securities.

(b) Subject to the First Lien/Second Lien Intercreditor Agreement, if an Event of Default shall occur and be continuing, then at any time in the Required Purchasers' discretion, upon one (1) Business Day's prior written notice to the relevant Grantor, (i) the Purchasers shall have the right to receive any and all cash dividends, payments or other Proceeds paid in respect of the Pledged Securities and make application thereof to the Obligations in accordance with Section 2.9(d) of the Note Purchase Agreement, and (ii) any or all of the Pledged Securities shall be registered in the name of the Collateral Agent or its nominee, and the Collateral Agent or its nominee (at the direction of the Required Purchasers) may thereafter exercise (x) all voting, corporate and other rights pertaining to such Pledged Securities at any meeting of shareholders (or other equivalent body) of the relevant Pledged Security Issuer or Pledged Security Issuers or otherwise and (y) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Pledged Securities as if it were the absolute owner thereof (including, without limitation, the right to exchange at its discretion any and all of the Pledged Securities upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the organizational structure of any Pledged Security Issuer, or upon the exercise by any Grantor or the Collateral Agent of any right, privilege or option pertaining to such Pledged Securities, and in connection therewith, the right to deposit and deliver any and all of the Pledged Securities with any committee, depositary, transfer agent, registrar or other designated agency upon such terms and conditions as the Collateral Agent (at the direction of the Required Purchasers) may determine), all without liability except to account for property actually received by it, but neither the Collateral Agent nor the Purchasers shall have any duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(c) Subject to the First Lien/Second Lien Intercreditor Agreement, each Grantor hereby authorizes and instructs each Pledged Security Issuer of any Pledged Securities pledged by such Grantor hereunder (and each Pledged Security Issuer party hereto hereby agrees) to comply with any instruction received by it from the Collateral Agent in writing (including any instruction to pay any dividends or other payments with respect to such Pledged Securities directly to the Purchasers or the Collateral Agent, as applicable), in each case, (i) after an Event of Default has occurred and is continuing and (so long as the Purchasers have complied with the notice provisions of subsection (b) above) (ii) that is otherwise in accordance with the terms of this Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that each Pledged Security Issuer shall be fully protected in so complying.

(d) After the occurrence and during the continuance of an Event of Default, upon notice to the relevant Grantor, if the Pledged Security Issuer of any Pledged Securities is the subject of bankruptcy, insolvency, receivership, custodianship or other proceedings under the supervision of any Governmental Authority, then all rights of the Grantor in respect thereof to exercise the voting and other consensual rights which such Grantor would otherwise be entitled to exercise with respect to the Pledged Securities issued by such Pledged Security Issuer shall cease, and, subject to the First Lien/Second Lien Intercreditor Agreement, all such rights shall thereupon become vested in the Collateral Agent who shall thereupon have the sole right to exercise such voting and other consensual rights (at the direction of the Required Purchasers), but neither the Collateral Agent nor the Purchasers shall have any duty to exercise any such voting or other consensual rights and shall not be responsible for any failure to do so or delay in so doing.

Section 7.2 **Collections on Accounts.** The Collateral Agent hereby authorizes each Grantor to collect upon the Accounts, Instruments, Chattel Paper and Payment Intangibles until the occurrence and during the continuance of an Event of Default. Upon the request of the Collateral Agent or the Required Purchasers, at any time after the occurrence and during the continuance of an Event of Default, subject to the First Lien/Second Lien Intercreditor Agreement, each Grantor shall notify the applicable Account Debtors that the applicable Accounts, Chattel Paper and Payment Intangibles have been assigned to the Collateral Agent for the ratable benefit of the Secured Parties and that payments in respect thereof shall be made directly to the Collateral Agent. Subject to the First Lien/Second Lien Intercreditor Agreement, upon the occurrence of and during the continuance of an Event of Default, the Collateral Agent may in its own name or in the name of the applicable Grantor communicate with the applicable Account Debtors to verify with them to its satisfaction the existence, amount and terms of any applicable Accounts, Chattel Paper or Payment Intangibles; provided that the applicable Grantor shall have a reasonable opportunity to be present for or participate in any such communications between the Account Debtor and the Collateral Agent.

Section 7.3 **Proceeds**. Subject to the First Lien/Second Lien Intercreditor Agreement, if required by the Collateral Agent (at the direction of the Required Purchasers) at any time after the occurrence and during the continuance of an Event of Default, any payments of Accounts, Instruments, Chattel Paper and Payment Intangibles comprising a portion of the Collateral, when collected or received by each Grantor, and any other cash or non-cash Proceeds received by each Grantor upon the sale or other disposition of any Collateral, shall be forthwith (and, in any event, within two (2) Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Collateral Agent in a special collateral account maintained by the Collateral Agent subject to withdrawal by the Collateral Agent for the ratable benefit of the Secured Parties only, as hereinafter provided, and, until so turned over, shall be held by such Grantor on behalf of and for the benefit of the Collateral Agent for the ratable benefit of the Secured Parties segregated from other funds of any such Grantor. Each deposit of any such Proceeds shall be accompanied by a report identifying in detail the nature and source of the payments included in the deposit. All Proceeds of the Collateral (including, without limitation, Proceeds constituting collections of Accounts, Chattel Paper, Instruments or Payment Intangibles comprising a portion of the Collateral) while held by the Collateral Agent (or by any Grantor on behalf of and for the benefit of the Collateral Agent for the ratable benefit of the Secured Parties) shall continue to be collateral security for all of the Secured Obligations and shall not constitute payment thereof until applied as hereinafter provided. Subject to the First Lien/Second Lien Intercreditor Agreement, at such intervals as may be agreed upon by each Grantor and the Collateral Agent (at the direction of the Required Purchasers), or, if an Event of Default shall have occurred and be continuing, at any time at the Collateral Agent's (at the direction of the Required Purchasers) election, the Collateral Agent shall apply all or any part of the Proceeds on deposit in said special collateral account on account of the Secured Obligations in the order set forth in Section 8.2 of the Note Purchase Agreement, and any part of such Proceeds which the Collateral Agent elects not so to apply and deems not required as collateral security for the Secured Obligations shall be paid over from time to time by the Collateral Agent to each Grantor or to whomsoever may be lawfully entitled to receive the same. After an Event of Default specified in Section 8.1(g) or 8.1(h) of the Note Purchase Agreement, any expenses incurred or services rendered by the Collateral Agent or any Purchaser in connection therewith (including the reasonable expenses of its counsel) shall constitute expenses of administration under the Bankruptcy Code.

Section 7.4 **UCC and Other Remedies**.

(a) Subject to the First Lien/Second Lien Intercreditor Agreement, if an Event of Default shall occur and be continuing, the Collateral Agent, on behalf of the Secured Parties, may exercise (at the direction of the Required Purchasers), in addition to all other rights, remedies, powers and privileges granted to them in this Agreement, the other Note Documents, and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations, all rights, remedies, powers and privileges of a secured party under the UCC (regardless of whether the UCC is in effect in the jurisdiction where such rights, remedies, powers or privileges are asserted) or any other applicable law or otherwise available at law or equity. Without limiting the generality of the foregoing, subject to the First Lien/Second Lien Intercreditor Agreement, the Collateral Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below or required by the Note Documents) to or upon any Grantor or any other Person (all and each of which demands, presentments, protests, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of the Collateral Agent or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Collateral Agent shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. Subject to the First Lien/Second Lien Intercreditor Agreement, if an Event of Default shall occur and be continuing, each Grantor further agrees, at the Collateral Agent's request (at the direction of the Required Purchasers), to assemble the Collateral and make it available to the Collateral Agent at places which the Collateral Agent shall reasonably select, whether at such Grantor's premises or elsewhere. Any such sale or transfer by the Collateral Agent either to itself or to any other Person shall be absolutely free from any claim of right by any Grantor, including any equity or right of redemption, stay or appraisal which such Grantor has or may have under any rule of law, regulation or statute now existing or hereafter adopted. Subject to the First Lien/Second Lien Intercreditor Agreement, upon any such sale or transfer, the Collateral Agent shall have the right to deliver, assign and transfer to the purchaser or transferee thereof the Collateral so sold or transferred. The Collateral Agent shall apply the net proceeds of any action taken by it pursuant to this Section, after deducting all documented out-of-pocket costs, fees and expenses incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Collateral Agent hereunder, including, without limitation, documented out-of-pocket attorneys' fees and disbursements, to the payment in whole or in part of the Obligations, in accordance with Section 8.2 of the Note Purchase Agreement, and only after such application and after the payment by the Collateral Agent of any other amount required by any provision of law, including, without limitation, Section 9-615 of the UCC, need the Collateral Agent account for the surplus, if any, to any Grantor. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against the Collateral Agent arising out of the exercise by them of any rights hereunder. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition.

(b) Subject to the First Lien/Second Lien Intercreditor Agreement, in the event that the Collateral Agent elects not to sell the Collateral, the Collateral Agent retains its rights to dispose of or utilize the Collateral or any part or parts thereof in any manner authorized or permitted by law or in equity and to apply the proceeds of the same towards payment of the Secured Obligations. Each and every method of disposition of the Collateral described in this Agreement shall constitute disposition in a commercially reasonable manner. The Collateral Agent may appoint any Person as agent to perform any act or acts necessary or incident to any sale or transfer of the Collateral.

Section 7.5 **Private Sales of Pledged Securities**. Each Grantor recognizes that the Collateral Agent may be unable to effect a public sale of any or all the Pledged Securities, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Collateral Agent shall be under no obligation to delay a sale of any of the Pledged Securities for the period of time necessary to permit the Pledged Security Issuer thereof to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if such Pledged Security Issuer would agree to do so. Each Grantor agrees to use its best efforts to do or cause to be done all such other acts as may reasonably be necessary to make such sale or sales of all or any portion of the Pledged Securities pursuant to this Section valid and binding and in compliance with any and all other applicable Requirements of Law. Each Grantor further agrees that a breach of any of the covenants of such Grantor contained in this Section will cause irreparable injury to the Collateral Agent and the 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 shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants.

Section 7.6 **Deficiency**. Each Grantor shall remain jointly and severally liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay its Obligations or Guaranteed Obligations, as the case may be, and the documented out-of-pocket fees and disbursements of any attorneys employed by the Collateral Agent or any other Secured Party to collect such deficiency.

Section 7.7 **Non-Judicial Enforcement**. The Collateral Agent may enforce its rights hereunder without prior judicial process or judicial hearing, and, to the extent permitted by law, each Grantor expressly waives any and all legal rights which might otherwise require the Collateral Agent to enforce its rights by judicial process (to the extent permitted to be waived by applicable law).

ARTICLE VIII

THE COLLATERAL AGENT

Section 8.1 **The Collateral Agent's Appointment as Attorney-in-Fact**.

(a) Each Grantor hereby irrevocably constitutes and appoints the Collateral Agent, after the occurrence and during the continuance of an Event of Default, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of this Agreement, subject to the First Lien/Second Lien Intercreditor Agreement, to take any and all reasonably appropriate action and to execute any and all documents and instruments which may be reasonably necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, subject to the First Lien/Second Lien Intercreditor Agreement, each Grantor hereby gives the Collateral Agent the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, after the occurrence and during the continuance of an Event of Default, to do any or all of the following:

(i) pay or discharge Taxes and Liens levied or placed on or threatened against the Collateral, effect any repairs or any insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(ii) execute, in connection with any sale provided for in Section 7.4 or Section 7.5, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(iii) (A) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Collateral Agent or as the Collateral Agent shall direct; (B) take possession of and indorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Account, Instrument, General Intangible, Chattel Paper or Payment Intangible constituting Collateral or with respect to any other Collateral, and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Collateral Agent for the purpose of collecting any or all such moneys due under any Account, Instrument or General Intangible constituting Collateral or with respect to any other Collateral whenever payable; (C) ask or demand for, collect, and receive payment of and receipt for any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (D) sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (E) receive, change the address for delivery, open and dispose of mail addressed to any Grantor, and execute, assign and indorse negotiable and other instruments for the payment of money, documents of title or other evidences of payment, shipment or storage for any form of Collateral on behalf of and in the name of any Grantor; (F) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (G) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (H) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Collateral Agent (at the reasonable direction of the Required Purchasers) or the Required Purchasers may deem appropriate; (I) assign any Patent or Trademark (along with the goodwill of the business to which any such Trademark pertains) throughout the world for such term or terms, on such conditions, and in such manner as the Required Purchasers shall in their sole discretion determine; and (J) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes, and do, at the Collateral Agent's option (at the direction of the Required Purchasers) and such Grantor's expense, at any time, or from time to time, all acts and things which the Collateral Agent (at the direction of the Required Purchasers) deems necessary to protect, preserve or realize upon the Collateral and the Collateral Agent's and the other Secured Parties' security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

Other than as required by Section 7.1, the Collateral Agent shall give the relevant Grantor notice of any action taken pursuant to this subsection when reasonably practicable; provided that the Collateral Agent shall have no liability for the failure to provide any such notice.

(b) If any Grantor fails to perform or comply with any of its agreements contained herein within the applicable grace periods, the Collateral Agent, at its option (at the direction of the Required Purchasers), but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement, in accordance with the terms hereof.

(c) The documented out-of-pocket fees and expenses of the Collateral Agent incurred in connection with actions undertaken as provided in this Section shall be payable by such Grantor to the Collateral Agent on demand.

(d) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof and in compliance herewith, subject in all respects to the terms hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

Section 8.2 **Duty of the Collateral Agent**. The Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the UCC or otherwise, shall be to deal with it in the same manner as the Collateral Agent deals with similar property and the Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which comparable secured parties accord comparable collateral. Neither the Collateral Agent, any other Secured Party nor any of their respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Collateral Agent hereunder are solely to protect the Collateral Agent's and the other Secured Parties' interests in the Collateral and shall not impose any duty upon the Collateral Agent to exercise any such powers. The Collateral Agent and the other Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except, with respect to any Secured Party, as determined by a court of competent jurisdiction in a final and non-appealable judgment to have resulted from (a) its own gross negligence or willful misconduct or (b) other than with respect to the Collateral Agent and its officers, directors, employees and agents, a material breach by such Secured Party of any of its undertakings, obligations or commitments under this Agreement or any other Note Document. To the fullest extent permitted by applicable law and except as required by this Agreement, the Collateral Agent shall be under no duty whatsoever to make or give any presentment, notice of dishonor, protest, demand for performance, notice of non-performance, notice of intent to accelerate, notice of acceleration, or other notice or demand in connection with any Collateral, or to take any steps necessary to preserve any rights against any Grantor or other Person or ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral, whether or not it has or is deemed to have knowledge of such matters. Each Grantor, to the extent permitted by applicable law, waives any right of marshaling in respect of any and all Collateral, and waives any right to require the Collateral Agent or any other Secured Party to proceed against any Grantor or other Person, exhaust any Collateral or enforce any other remedy which the Collateral Agent or any other Secured Party now has or may hereafter have against any Grantor or other Person.

Section 8.3 **Filing of Financing Statements**. Pursuant to the UCC and any other applicable law, each Grantor authorizes the Collateral Agent, its counsel or its representative, at any time and from time to time, to file or record financing statements, continuation statements, amendments thereto and other filing or recording documents or instruments with respect to the Collateral without the signature of such Grantor in such form and in such offices as the Collateral Agent reasonably determines appropriate to perfect the security interests of the Collateral Agent under this Agreement. Additionally, each Grantor authorizes the Collateral Agent, its counsel or its representative, at any time and from time to time, to file or record such financing statements that describe the collateral covered thereby as "all assets of the Grantor", "all personal property of the Grantor" or words of similar effect. A photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction. For the avoidance of doubt, nothing herein shall require the Collateral Agent to file financing statements, termination statements or continuation statements, or be responsible for maintaining the security interests purported to be created as described herein (except for the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder or under any other Note Documents) and such responsibility shall be solely that of the Note Parties; provided that, upon the written direction of the Required Purchasers, the Collateral Agent shall file financing statements, termination statements or continuation statements.

Section 8.4 **Authority of the Collateral Agent**. Each Grantor acknowledges that the rights and responsibilities of the Collateral Agent under this Agreement with respect to any action taken by the Collateral Agent or the exercise or non-exercise by the Collateral Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Collateral Agent and the other Secured Parties, be governed by the Note Purchase Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Collateral Agent and the Grantors, the Collateral Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

ARTICLE IX

SUBORDINATION OF INDEBTEDNESS

Section 9.1 **Subordination of All Guarantor Claims**. As used herein, the term "Guarantor Claims" shall mean all debts and obligations of the Issuer or any Grantor owing to any other Grantor, whether such debts and obligations now exist or are hereafter incurred or arise, or whether the obligation of the debtor thereon be direct, contingent, primary, secondary, several, joint and several, or otherwise, and irrespective of whether such debts or obligations be evidenced by note, contract, open account, or otherwise, and irrespective of the manner in which they have been or may hereafter be acquired. After the occurrence and during the continuation of an Event of Default, no Grantor shall receive or collect, directly or indirectly, from any obligor in respect thereof any amount on account of the Guarantor Claims.

Section 9.2 **Claims in Bankruptcy**. In the event of receivership, bankruptcy, reorganization, arrangement, debtor's relief or other insolvency proceedings involving any Grantor, the Collateral Agent on behalf of the Secured Parties shall have the right to prove their claim in any proceeding, so as to establish their rights hereunder and, subject to the First Lien/Second Lien Intercreditor Agreement, receive directly from the receiver, trustee or other court custodian payments which would otherwise be payable upon the Guarantor Claims. After the occurrence and during the continuance of an Event of Default, each Grantor hereby assigns such payments to the Collateral Agent for the benefit of the Secured Parties for application against the Secured Obligations as provided under Section 8.2 of the Note Purchase Agreement. Should the Collateral Agent or any other Secured Party receive, for application upon the Secured Obligations, any such payment which is otherwise payable to any Grantor, and which, as between such Grantor, shall constitute a credit upon the Guarantor Claims, then upon payment in full of the Secured Obligations (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made) and termination of all Commitments and Delayed Draw Commitments, the intended recipient shall become subrogated to the rights of the Collateral Agent and the other Secured Parties to the extent that such payments to the Collateral Agent and the other Secured Parties on the Guarantor Claims have contributed toward the liquidation of the Secured Obligations, and such subrogation shall be with respect to that proportion of the Secured Obligations which would have been unpaid if the Collateral Agent and the other Secured Parties had not received payments upon the Guarantor Claims.

Section 9.3 **Payments Held for Benefit of Collateral Agent**. In the event that, notwithstanding Section 9.1 and Section 9.2, any Grantor should receive any funds, payments, claims or distributions which are prohibited by such Sections, then it agrees (a) to hold on behalf of and for the benefit of the Collateral Agent and the other Secured Parties an amount equal to the amount of all funds, payments, claims or distributions so received, (b) that it shall have absolutely no dominion over the amount of such funds, payments, claims or distributions except, subject to the First Lien/Second Lien Intercreditor Agreement, to pay them promptly to the Collateral Agent for the benefit of the Secured Parties, and (c) subject to the First Lien/Second Lien Intercreditor Agreement, to promptly pay the same to the Collateral Agent for the benefit of the Secured Parties.

Section 9.4 **Liens Subordinate**. Each Grantor agrees that, until the Termination Date, any Liens securing payment of the Guarantor Claims shall be and remain inferior and subordinate to any Liens securing payment of the Secured Obligations, regardless of whether such encumbrances in favor of such Grantor, the Collateral Agent or any other Secured Party presently exist or are hereafter created or attach. Without the prior written consent of the Collateral Agent (at the direction of the Required Purchasers), until the Termination Date, no Grantor shall (a) exercise or enforce any creditor's right it may have against any debtor in respect of the Guarantor Claims, or (b) foreclose, repossess, sequester or otherwise take steps or institute any action or proceeding (judicial or otherwise, including, without limitation, the commencement of or joinder in any liquidation, bankruptcy, rearrangement, debtor's relief or insolvency proceeding) to enforce any Lien held by it.

Section 9.5 **Notation of Records**. Upon the request of the Collateral Agent (at the direction of the Required Purchasers), all promissory notes and all accounts receivable ledgers or other evidence of the Guarantor Claims accepted by or held by any Grantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under the terms of this Agreement.

ARTICLE X

MISCELLANEOUS

Section 10.1 **Waiver**. No failure on the part of the Collateral Agent or any other Secured Party to exercise and no delay by any such Person in exercising, and no course of dealing with respect to, any right, remedy, power or privilege under any of the Note Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy power or privilege under any of the Note Documents preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided herein are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. The exercise by the Collateral Agent of any one or more of the rights, powers and remedies herein shall not be construed as a waiver of any other rights, powers and remedies, including, without limitation, any rights of set-off.

Section 10.2 **Notices**. All notices and other communications provided for herein shall be given in the manner and subject to the terms of Section 10.1 of the Note Purchase Agreement; provided that any such notice, request or demand to or upon any Guarantor shall be addressed to such Guarantor at its notice address set forth on Schedule 1.

Section 10.3 **Payment of Expenses, Indemnities**.

(a) Each Grantor agrees to pay or promptly reimburse the Collateral Agent and each other Secured Party for all documented fees, advances, charges, costs and expenses (including, without limitation, all documented costs and expenses of holding, preparing for sale and selling, collecting or otherwise realizing upon the Collateral and all documented fees, disbursements, and expenses of one outside counsel to each such party (and any required special or local counsel to each such party) and court costs) incurred by any Secured Party in connection with the enforcement or protection of its rights in connection with this Agreement, including, without limitation, in connection with (i) the preservation of the Lien of, or the rights of the Collateral Agent or any other Secured Party under, this Agreement, (ii) any actual or attempted sale, lease, disposition, exchange, collection, compromise, settlement or other realization in respect of, or care of, the Collateral, including all such costs and expenses incurred in any bankruptcy, reorganization, workout or other similar proceeding, or (iii) collecting against such Grantor under the guarantee contained in Article II or otherwise enforcing or preserving any rights under this Agreement and the other Note Documents to which such Grantor is a party.

(b) Each Grantor shall, jointly and severally, indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and expenses (including the fees, disbursements, and expenses of any counsel for any Indemnitee), and shall reimburse each Indemnitee upon demand for any legal or other expenses incurred in connection with investigating or defending any of the following, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Grantor or any of their Subsidiaries or Affiliates arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, the performance by the parties hereto of their respective obligations hereunder or the consummation of the transactions contemplated hereby, (ii) the Collateral (including any exercise of rights or remedies in connection therewith), or (iii) any actual or prospective suit, claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Grantor or any Grantor's equity holders, Affiliates or creditors, and regardless of whether any Indemnitee or such Grantor 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 other expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from (x) the gross negligence or willful misconduct of such Indemnitee or (y) other than with respect to the Collateral Agent and its Related Parties, a material breach by such Indemnitee of any of its undertakings, obligations or commitments under this Agreement.

(c) To the extent permitted by applicable law, the Grantors shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to actual or direct damages) arising out of, in connection with or as a result of this Agreement, any other Note Document or any agreement or instrument contemplated hereby, the transactions contemplated therein.

(d) All amounts for which any Grantor is liable pursuant to this Section shall be due and payable by such Grantor to the Collateral Agent or any Secured Party upon demand.

Section 10.4 **Amendments in Writing**. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 10.2 of the Note Purchase Agreement.

Section 10.5 **Successors and Assigns**. This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of the Collateral Agent and the other Secured Parties and their respective successors and permitted assigns; provided that no Grantor may assign, transfer or delegate any of its rights or Secured Obligations under this Agreement without the prior written consent of the Collateral Agent and the Purchasers.

Section 10.6 **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 10.7 **Counterparts**. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed counterpart to this Agreement by facsimile transmission or by electronic mail in pdf format shall be as effective as delivery of a manually executed counterpart hereof.

Section 10.8 **Survival**. The obligations of the parties under Section 10.3 shall survive the repayment of the Secured Obligations and the termination of the Note Purchase Agreement and the Commitments and the Delayed Draw Commitments and, as applicable, removal or resignation of the Collateral Agent under the Note Documents. To the extent that any payments on the Secured Obligations or proceeds of any Collateral are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver or other Person under any bankruptcy law, common law or equitable cause, then, to such extent, the Secured Obligations so satisfied shall be revived and continue as if such payment or proceeds had not been received and the Collateral Agent's and the other Secured Parties' Liens, security interests, rights, powers and remedies under this Agreement and each other applicable Collateral Document shall continue in full force and effect. In such event, each applicable Collateral Document shall be automatically reinstated and each Grantor shall take such action as may be reasonably requested by the Collateral Agent and the other Secured Parties to effect such reinstatement.

Section 10.9 **Captions**. Captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

Section 10.10 **No Oral Agreements**. The Note Documents embody the entire agreement and understanding between the parties and supersede all other agreements and understandings between such parties relating to the subject matter hereof and thereof. The Note Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 10.11 **Governing Law; Submission to Jurisdiction**.

(a) This Agreement and the other Note Documents any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Note Document (except, as to any other Note Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be construed in accordance with and be governed by the law of the State of New York.

(b) Each Grantor hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court for the Southern District of New York, and of the Supreme Court of the State of New York sitting in New York county, and of any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Note Document or the transactions contemplated hereby or thereby, 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 District Court or such New York state court or, to the extent permitted by applicable law, such appellate 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 Note Document shall affect any right that the Collateral Agent or any Purchaser may otherwise have to bring any action or proceeding relating to this Agreement or any other Note Document against the Issuer or its properties in the courts of any jurisdiction.

(c) Each Grantor irrevocably and unconditionally waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding described in subsection (b) of this Section and brought in any court referred to in subsection (b) of this Section. Each of the parties hereto irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to the service of process in the manner provided for notices in Section 10.2. Nothing in this Agreement or in any other Note Document will affect the right of any party hereto to serve process in any other manner permitted by law.

Section 10.12 WAIVER OF JURY TRIAL. EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF THIS AGREEMENT OR ANY OTHER NOTE DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER 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 AND THE OTHER NOTE DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.13 Acknowledgments.

(a) Each Grantor hereby acknowledges that:

(i) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Note Documents to which it is a party;

(ii) neither the Collateral Agent nor any other Secured Party has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement or any of the other Note Documents, and the relationship between the Grantors, on the one hand, and the Collateral Agent and the other Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(iii) no joint venture is created hereby or by the other Note Documents or otherwise exists by virtue of the transactions contemplated hereby among the Secured Parties or among the Grantors and the Purchasers.

(b) Each of the parties hereto specifically agrees that it has a duty to read this Agreement and the other Note Documents to which it is a party and agrees that it is charged with notice and knowledge of the terms of this Agreement and the other Note Documents to which it is a party; that it has in fact read this Agreement and the other Note Documents to which it is a party and is fully informed and has full notice and knowledge of the terms, conditions and effects of this Agreement and the other Note Documents to which it is a party; that it has been represented by independent legal counsel of its choice throughout the negotiations preceding its execution of this Agreement and the other Note Documents to which it is party; and has received the advice of its attorney in entering into this Agreement and the other Note Documents to which it is a party; and that it recognizes that certain of the terms of this Agreement and other Note Documents to which it is a party result in one party assuming the liability inherent in some aspects of the transaction and relieving the other party of its responsibility for such liability. Each Grantor agrees and covenants that it will not contest the validity or enforceability of any exculpatory provision of this Agreement or the other Note Documents to which it is a party on the basis that such Grantor had no notice or knowledge of such provision or that the provision is not “conspicuous”.

(c) Each Grantor warrants and agrees that each of the waivers and consents set forth in this Agreement are made voluntarily and unconditionally after consultation with outside legal counsel and with full knowledge of their significance and consequences, with the understanding that events giving rise to any defense or right waived may diminish, destroy or otherwise adversely affect rights which such Grantor otherwise may have against any other Grantor, the Collateral Agent, the other Secured Parties or any other Person or against any Collateral. If, notwithstanding the intent of the parties that the terms of this Agreement shall control in any and all circumstances, any such waivers or consents are determined to be unenforceable under applicable law, such waivers and consents shall be effective to the maximum extent permitted by law.

Section 10.14 **Additional Grantors**. Each Person that is required to become a party to this Agreement pursuant to Section 5.12 of the Note Purchase Agreement and is not a signatory hereto shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Person of a Joinder Agreement in the form of Annex I.

Section 10.15 **Set-Off**. Each Grantor agrees that, in addition to (and without limitation of) any right of set-off, bankers' lien or counterclaim a Secured Party may otherwise have, each Secured Party shall have the right and be entitled, at its option, to offset (i) balances held by it or by any of its Affiliates (or any other Secured Party) for account of any Grantor or any of its Subsidiaries at any of its offices, in dollars or in any other currency, and (ii) Obligations then due and payable to such Secured Party (or any Affiliate of such Secured Party), which are not paid when due, in which case it shall promptly notify the Issuer and the Collateral Agent thereof, provided that such Secured Party's failure to give such notice shall not affect the validity thereof.

Section 10.16 **Releases**.

(a) Release Upon Payment in Full. Upon the indefeasible complete payment in full of all Secured Obligations (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made) in cash and the termination of the Note Purchase Agreement, and all Commitments and Delayed Draw Commitments thereunder (the "Termination Date"), this Agreement shall be of no further force and effect and the Collateral Agent, at the written request and expense of the Issuer, and written direction of the Required Purchasers, shall promptly execute and deliver to such Grantor all releases or other documents and reassign, release, transfer or deliver the Collateral then in the possession of the Collateral Agent to the Grantors, without recourse, representation, warranty or other assurance of any kind.

(b) Further Assurances. If any of the Collateral shall be sold, transferred or otherwise disposed of by any Grantor in a transaction permitted by the Note Purchase Agreement, then the Collateral Agent, at the request and sole expense of such Grantor, shall promptly execute and deliver to such Grantor all releases or other documents reasonably necessary for the release of the Liens created hereby on such Collateral and the Capital Stock of such Grantor, made without recourse, representation, warranty or other assurance of any kind. At the request and sole expense of the Issuer, a Grantor shall be released from its obligations hereunder in the event that all the Capital Stock of such Grantor shall be sold, transferred or otherwise disposed of in a transaction permitted by the Note Purchase Agreement; provided that the Issuer shall have delivered to the Collateral Agent and the Purchasers, at least 10 Business Days prior to the date of the proposed release, a written request for release identifying the relevant Grantor and the terms of the sale or other disposition in reasonable detail, including the price thereof and any expenses in connection therewith, together with a certification by the Issuer stating that such transaction is in compliance with the Note Purchase Agreement and the other Note Documents.

(c) Retention in Satisfaction. Except as may be expressly applicable pursuant to Section 9-620 of the UCC, no action taken or omission to act by the Collateral Agent or the other Secured Parties hereunder, including, without limitation, any exercise of voting or consensual rights or any other action taken or inaction, shall be deemed to constitute a retention of the Collateral in satisfaction of the Secured Obligations or otherwise to be in full satisfaction of the Secured Obligations, and the Secured Obligations shall remain in full force and effect, until the Collateral Agent and the other Secured Parties shall have applied payments (including, without limitation, collections from Collateral) towards the Secured Obligations in the full amount then outstanding or until such subsequent time as is provided in subsection (a) of this Section.

Section 10.17 Reinstatement. The obligations of each Grantor under this Agreement (including, without limitation, with respect to the guarantee contained in Article II and the provision of collateral herein) shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored or returned by the Collateral Agent or any other Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Issuer or any other Grantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Issuer or any other Grantor or any substantial part of its property, or otherwise, all as though such payments had not been made.

Section 10.18 Acceptance. Each Grantor hereby expressly waives notice of acceptance of this Agreement, acceptance on the part of the Collateral Agent and the other Secured Parties being conclusively presumed by their request for this Agreement and delivery of the same to the Collateral Agent.

Section 10.19 Relation to Other Note Documents. The provisions of this Agreement shall be read and construed with the other Note Documents referred to below in the manner so indicated.

(a) Note Purchase Agreement. In the event of any conflict between any provision in this Agreement and a provision in the Note Purchase Agreement, such provision of the Note Purchase Agreement shall control.

(b) Intellectual Property Security Agreements. The provisions of any Intellectual Property Security Agreement are supplemental to the provisions of this Agreement, and nothing contained in any Intellectual Property Security Agreement shall limit any of the rights or remedies of Collateral Agent hereunder.

Section 10.20 **Intercreditor Agreement**. Notwithstanding anything herein to the contrary, each Grantor and the Collateral Agent (on behalf of each Secured Party) agrees that the Lien and security interest granted to the Collateral Agent pursuant to this Agreement and the exercise of any right or remedy by the Collateral Agent hereunder, after the execution and delivery thereof, are subject to the provisions of the First Lien/Second Lien Intercreditor Agreement, the ABDC Intercreditor Agreement and each other intercreditor agreement entered into by the Collateral Agent with respect to the Secured Obligations. In the event of any conflict between the terms of the First Lien/Second Lien Intercreditor Agreement, the ABDC Intercreditor Agreement or any other intercreditor agreement entered into by the Collateral Agent with respect to the Secured Obligations and the terms of this Agreement (other than Article II hereof), the terms of the First Lien/Second Lien Intercreditor Agreement, the ABDC Intercreditor Agreement or such other intercreditor agreement shall govern and control at any time that the First Lien/Second Lien Intercreditor Agreement, the ABDC Intercreditor Agreement or such other intercreditor agreement is in effect. At any time (x) prior to the First Lien Priority Termination Date or (y) after the Second Lien Priority Termination Date and prior to the Discharge of First Lien Obligations (but not, for the avoidance of doubt, after the First Lien Priority Termination Date but prior to the Second Lien Priority Termination Date) (as such terms are defined in the First Lien/Second Lien Intercreditor Agreement), the requirements of this Agreement to deliver Collateral and certificates, instruments or documents in relation thereto to the Collateral Agent shall be deemed satisfied by delivery of such Collateral and such certificates, instruments or documents in relation thereto to the First Lien Collateral Agent (as bailee for the Collateral Agent). Notwithstanding anything to the contrary contained herein, the Collateral Agent acknowledges and agrees that no Grantor shall be required to take or refrain from taking any action at the request of the Collateral Agent with respect to the Collateral if such action or inaction would be inconsistent with the terms of the ABDC Intercreditor Agreement or any other intercreditor agreement entered into by the Collateral Agent with respect to the Secured Obligations.

Section 10.21 **Collateral Agent Rights**. The Collateral Agent shall be entitled to all of the rights, protections, indemnities and immunities set forth in the Note Purchase Agreement as if set forth herein.

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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.

ISSUER:

BIOSCRIP, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

GUARANTORS:

APPLIED HEALTH CARE, LLC

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

BIOSCRIP INFUSION MANAGEMENT, LLC

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

BIOSCRIP INFUSION SERVICES, INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

BIOSCRIP INFUSION SERVICES, LLC

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

BIOSCRIP MEDICAL SUPPLY SERVICES, LLC

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

BIOSCRIP NURSING SERVICES, LLC

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

BIOSCRIP PBM SERVICES, LLC

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

BIOSCRIP PHARMACY (NY), INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

BIOSCRIP PHARMACY, INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

BIOSCRIP PHARMACY SERVICES, INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

CHS HOLDINGS, INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

BRADHURST SPECIALTY PHARMACY, INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

DEACONESS ENTERPRISES, LLC

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

EAST GOSHEN PHARMACY, INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

INFUCENTERS, LLC

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

INFUSCIENCE HHA, LLC

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

INFUSCIENCE SOUTH CAROLINA, LLC

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

INFUSION PARTNERS, LLC

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

INFUSION PARTNERS OF MELBOURNE, LLC

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

CHRONIMED, LLC

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

CRITICAL HOMECARE SOLUTIONS, INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

DEACONESS HOMECARE, LLC

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

HOMECHOICE PARTNERS, INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

INFUSAL PARTNERS

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

INFUSCIENCE, INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

INFUSCIENCE SUB, INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

INFUSION THERAPY SPECIALISTS, INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

NATIONAL HEALTH INFUSION, INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

NEW ENGLAND HOME THERAPIES, INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

PROFESSIONAL HOME CARE SERVICES, INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

SCOTT-WILSON, INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

WILCOX MEDICAL, INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

INFUSION PARTNERS OF BRUNSWICK, LLC

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

INFUSION SOLUTIONS, INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

KNOXVILLE HOME THERAPIES, LLC

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

NATURAL LIVING, INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

OPTION HEALTH, LTD.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

REGIONAL AMBULATORY DIAGNOSTICS, INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

PHCS ACQUISITION CO, INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

SPECIALTY PHARMA, INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

NUTRI USA INC.

By: **/s/ Stephen Deitsch**
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

Acknowledged and Agreed to as of the date hereof:

COLLATERAL AGENT:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: /s/ Michael Pinzon
Name: Michael Pinzon
Title: Vice President

ANNEX I

Form of Joinder Agreement

THIS JOINDER AGREEMENT, dated as of [_____] (this "Joinder Agreement"), is made by [*NAME OF NEW SUBSIDIARY*], a [_____] (the "Additional Grantor"), in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, as Collateral Agent (in such capacity, together with its successors and assigns, the "Collateral Agent") for the Secured Parties (as defined in the Guaranty and Security Agreement referred to below). All capitalized terms not defined herein shall have the meanings assigned to them in the Guaranty and Security Agreement.

WHEREAS, BioScrip, Inc., a Delaware corporation (the "Issuer") has entered into that certain Second Lien Note Purchase Agreement dated as of June 29, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Note Purchase Agreement"), by and among the Issuer, the purchasers from time to time party thereto and the Collateral Agent, providing for, among other things, the issuance by the Issuer and the purchase by the Purchasers of the Notes, subject to the terms set forth therein;

WHEREAS, in connection with the Note Purchase Agreement, the Issuer and certain of its Subsidiaries have entered into that certain Second Lien Guaranty and Security Agreement dated as of June 29, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Guaranty and Security Agreement"), in favor of the Collateral Agent for the benefit of the Secured Parties;

WHEREAS, the Note Purchase Agreement requires the Additional Grantor to become a party to the Guaranty and Security Agreement; and

WHEREAS, the Additional Grantor has agreed to execute and deliver this Joinder Agreement in order to become a party to the Guaranty and Security Agreement;

NOW, THEREFORE, it is agreed:

SECTION 1. **Guaranty and Security Agreement.** By executing and delivering this Joinder Agreement, the Additional Grantor, as provided in Section 10.14 of the Guaranty and Security Agreement, hereby becomes a party to the Guaranty and Security Agreement as a Grantor thereunder with the same force and effect as if originally named therein as a Grantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Grantor thereunder and hereby pledges and grants to the Collateral Agent, for the ratable benefit of the Secured Parties, a security interest in and lien on all right, title and interest of the Additional Grantor in all property of such Additional Grantor that constitutes Collateral, wherever located and whether now owned or at any time hereafter acquired by the Additional Grantor, or in which the Additional Grantor now has or at any time in the future may acquire any right, title or interest and whether now existing or hereafter coming into existence, as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations. The information set forth in Schedule A hereto is hereby added to the information set forth in Schedules 1 through 9 to the Guaranty and Security Agreement and the Additional Grantor represents and warrants that all information set forth on Schedule A is true, correct and complete in all respects as of the date hereof. The Additional Grantor hereby represents and warrants that each of the representations and warranties contained in Article V of the Guaranty and Security Agreement is true and correct in all material respects (or if already qualified by materiality or Material Adverse Effect, in all respects) on and as of the date hereof (after giving effect to this Joinder Agreement) as if made by such Additional Grantor on and as of the date hereof. Not in limitation of the foregoing, the Additional Grantor hereby confirms that by execution of this Joinder Agreement, it is jointly and severally liable with the other Guarantors for all Guaranteed Obligations, whether now existing or hereafter arising, in accordance with and subject to the terms of the Guaranty and Security Agreement. Each reference to a "Grantor" or a "Guarantor" in the Guaranty and Security Agreement shall be deemed to include the Additional Grantor.

SECTION 2. **Governing Law.** THIS JOINDER AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

SECTION 3. **Acknowledgement.** The Additional Grantor acknowledges and confirms that it has received a copy of the Note Purchase Agreement, the Guaranty and Security Agreement, and the other Note Documents and, in each case, all schedules and exhibits thereto.

SECTION 4. **Further Assurances.** The Additional Grantor agrees that at any time and from time to time, upon the written request of the Collateral Agent or the Required Purchasers, it will execute and deliver such further documents and do such further acts and things as the Collateral Agent or the Required Purchasers may reasonably request in order to effect the purposes of this Joinder Agreement in accordance with and subject to the terms of the Guaranty and Security Agreement.

SECTION 5. **Counterparts.** This Joinder Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Joinder Agreement by signing any such counterpart. Delivery of an executed counterpart to this Joinder Agreement by facsimile transmission or by electronic mail in pdf format shall be as effective as delivery of a manually executed counterpart hereof.

SECTION 6. **Note Document.** Except as expressly supplemented hereby, the Note Documents shall remain in full force and effect. For avoidance of doubt, the Additional Grantor and the Collateral Agent hereby acknowledge and agree that this Joinder Agreement is a Note Document.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

Annex I

IN WITNESS WHEREOF, the undersigned has caused this Joinder Agreement to be duly executed and delivered as of the date first above written.

[*NAME OF ADDITIONAL GRANTOR*]

By: _____
Name:
Title:

Acknowledged and Agreed to as of the date hereof:

COLLATERAL AGENT:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: _____
Name:
Title:

SCHEDULE A

Supplement to Schedules of
Second Lien Guaranty and Security Agreement

Annex I

ANNEX II

Form of Intellectual Property Security Agreement (Second Lien)

THIS [COPYRIGHT][PATENT][TRADEMARK] SECURITY AGREEMENT (SECOND LIEN), dated as of [_____] (this "Security Agreement"), is made by [*NAME OF GRANTOR*], a [_____] (the "Grantor"), in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, as collateral agent (in such capacity, together with its successors and assigns, the "Collateral Agent") for the Secured Parties (as defined in the Guaranty and Security Agreement referred to below).

WHEREAS, BioScrip, Inc., a Delaware corporation (the "Issuer") has entered into that certain Second Lien Note Purchase Agreement dated as of June 29, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Note Purchase Agreement"), by and among the Issuer, the purchasers from time to time party thereto and the Collateral Agent, providing for, among other things, the issuance by the Issuer and the purchase by the Purchasers of the Notes, subject to the terms set forth therein;

WHEREAS, in connection with the Note Purchase Agreement, the Issuer and certain of its Subsidiaries have entered into that certain Second Lien Guaranty and Security Agreement dated as of June 29, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Guaranty and Security Agreement"), in favor of the Collateral Agent for the benefit of the Secured Parties; and

WHEREAS, the Guaranty and Security Agreement requires the Grantor to execute and deliver this Security Agreement;

NOW, THEREFORE, in consideration of the premises and in order to ensure compliance with the Note Purchase Agreement, the Grantor hereby agrees as follows:

SECTION 1. **Defined Terms.** Capitalized terms used herein without definition are used as defined in the Guaranty and Security Agreement.

SECTION 2. **Grant of Security Interest in [Copyright][Patent][Trademark] Collateral.** The Grantor, as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations, hereby pledges and grants to the Collateral Agent, for the ratable benefit of the Secured Parties, a security interest in and lien on all right, title and interest of the Grantor in, to and under the following Collateral (in each case, other than Excluded Property) (the "[Copyright][Patent][Trademark] Collateral"):

[(a) all of its Copyrights and all Copyright Licenses;

(b) all renewals, reversions and extensions of the foregoing; and

(c) all income, royalties, proceeds and liabilities at any time due or payable or asserted under and with respect to any of the foregoing, including, without limitation, all rights to sue and recover at law or in equity for any past, present and future infringement, misappropriation, dilution, violation or other impairment thereof.]

[(a) all of its Patents and all Patent Licenses;

(b) all reissues, reexaminations, continuations, continuations-in-part, divisions, renewals and extensions of the foregoing; and

(c) all income, royalties, proceeds and liabilities at any time due or payable or asserted under and with respect to any of the foregoing, including, without limitation, all rights to sue and recover at law or in equity for any past, present and future infringement, misappropriation, dilution, violation or other impairment thereof.]

[(a) all of its Trademarks and all Trademark Licenses;

(b) all renewals and extensions of the foregoing;

(c) all goodwill of the business connected with the use of, and symbolized by, each such Trademark; and

(d) all income, royalties, proceeds and liabilities at any time due or payable or asserted under and with respect to any of the foregoing, including, without limitation, all rights to sue and recover at law or in equity for any past, present and future infringement, misappropriation, dilution, violation or other impairment thereof.]

As of the date of this Security Agreement, all of the Grantor's [Copyright][Patent][Trademark] Collateral is set forth on Schedule I hereto.

SECTION 3. **Guaranty and Security Agreement.** The security interest granted pursuant to this Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Guaranty and Security Agreement, and the Grantor hereby acknowledges and agrees that the rights and remedies of the Collateral Agent with respect to the security interest in the [Copyright][Patent][Trademark] Collateral made and granted hereby are more fully set forth in the Guaranty and Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event of any conflict or inconsistency between this Security Agreement and the Guaranty and Security Agreement (or any portion hereof or thereof), the terms of the Guaranty and Security Agreement shall prevail.

SECTION 4. **Termination.** This Security Agreement shall terminate and the Lien on and security interest in the [Copyright] [Patent] [Trademark] Collateral shall be released in accordance with Section 10.16 of the Guaranty and Security Agreement. Upon the termination of this Security Agreement, the Collateral Agent shall, at the sole cost and expense of the Note Parties, promptly execute all documents, make all filings and take all other actions reasonably requested by the Grantors to evidence and record the release of the Lien on and security interests in the [Copyright] [Patent] [Trademark] Collateral granted herein.

SECTION 5. **Grantor Remains Liable.** The Grantor hereby agrees that, anything herein to the contrary notwithstanding, the Grantor shall retain full and complete responsibility for the prosecution, defense, enforcement or any other necessary or desirable actions in connection with the [Copyright] [Patent][Trademark] Collateral subject to a security interest hereunder.

SECTION 6. **Governing Law.** THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

SECTION 7. **Counterparts.** This Security Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Security Agreement by signing any such counterpart. Delivery of an executed counterpart to this Security Agreement by facsimile transmission or by electronic mail in pdf format shall be as effective as delivery of a manually executed counterpart hereof.

SECTION 8. **Note Document.** For avoidance of doubt, the Grantor and the Collateral Agent hereby acknowledge and agree that this Security Agreement is a Note Document.

SECTION 9. **Intercreditor Agreement.** Notwithstanding anything herein to the contrary, the Grantor and the Collateral Agent (on behalf of each Secured Party) agree that the Lien and security interest granted to the Collateral Agent pursuant to this Security Agreement and the exercise of any right or remedy by the Collateral Agent hereunder, after the execution and delivery thereof, are subject to the provisions of the First Lien/Second Lien Intercreditor Agreement, the ABDC Intercreditor Agreement and each other intercreditor agreement entered into by the Collateral Agent with respect to the Secured Obligations. In the event of any conflict between the terms of the First Lien/Second Lien Intercreditor Agreement, the ABDC Intercreditor Agreement or any other intercreditor agreement entered into by the Collateral Agent with respect to the Secured Obligations and the terms of this Security Agreement, the terms of the First Lien/Second Lien Intercreditor Agreement, the ABDC Intercreditor Agreement or such other intercreditor agreement shall govern and control at any time that the First Lien/Second Lien Intercreditor Agreement, the ABDC Intercreditor Agreement or such other intercreditor agreement is in effect.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

[NAME OF GRANTOR]

By: _____
Name:
Title:

Acknowledged and Agreed to as of the date hereof:

COLLATERAL AGENT:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: _____
Name:
Title:

SCHEDULE I

[Copyrights][Patents][Trademarks] and [Copyright][Patent][Trademark] Licenses

I. REGISTERED [COPYRIGHTS][PATENTS][TRADEMARKS]

[Include registration number and date]

II. [COPYRIGHT][PATENT][TRADEMARK] APPLICATIONS

[Include application number and date]

III. [COPYRIGHT][PATENT][TRADEMARK] LICENSES

[Include complete legal description of agreement (name of agreement, parties and date)]

ANNEX III

Form of Acknowledgment and Consent

The undersigned hereby acknowledges receipt of a copy of that certain Second Lien Guaranty and Security Agreement, dated as of June 29, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Agreement"), made by BIOSCRIP, INC., a Delaware corporation and the other Grantors party thereto for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION, as collateral agent (in such capacity, together with its successors and assigns, the "Collateral Agent"). The undersigned agrees for the benefit of the Collateral Agent and the Secured Parties defined therein as follows:

1. The undersigned will be bound by the terms of the Agreement relating to the Pledged Securities issued by the undersigned and will comply with such terms insofar as such terms are applicable to the undersigned.

2. The terms of Sections 7.1(c) and 7.5 of the Agreement shall apply to it, *mutatis mutandis*, with respect to all actions that may be required of it pursuant to Sections 7.1(c) or 7.5 of the Agreement with respect to the Pledged Securities issued by the undersigned.

[*NAME OF PLEDGED SECURITY ISSUER*]

By: _____
Name:
Title:

Address for Notices:
[_____]
[_____]
Attention: [_____]
Telecopy Number: [_____]

Exhibit 10.5
EXECUTION VERSION

BioScrip, Inc.
1600 Broadway, Suite 700
Denver, CO 80202

June 29, 2017

Undersigned Subscribers

Re: Warrant Purchase Agreement

Ladies and Gentlemen:

We are pleased you (the "**Subscribers**" or "**you**") have accepted the offer (in connection with the execution and delivery of the Second Lien Note Purchase Agreement (the "**Second Lien Note Purchase Agreement**"), the Stock Purchase Agreement (the "**Stock Purchase Agreement**"), the Warrant Agreement (the "**Warrant Agreement**"), the Registration Rights Agreement (the "**Registration Rights Agreement**," and, together with the Second Lien Note Purchase Agreement, Stock Purchase Agreement and the Warrant Agreement, the "**Other Agreements**"), each among BioScrip, Inc., a Delaware corporation (the "**Company**"), and the other signatories party thereto and of even date herewith) to purchase warrants (the "**Warrants**") to purchase the percentage of the Fully Diluted (as defined in the Warrant Agreement) common stock of the Company, par value $0.0001 per share (the "**Common Stock**" or "**Shares**") outstanding on the date of any exercise of such Warrants, such percentage in an amount equal to the number set forth next to your signature pages below (the "**Underlying Shares**"). The terms (this "**Agreement**") on which the Subscribers are willing to purchase the Warrants from the Company, and the Company and the Subscribers' agreements regarding the sale and purchase of such Warrants, are as follows, it being understood that all obligations, agreements and representations of the Subscribers under this Agreement are several and not joint:

1. Purchase of the Warrants. Subject to satisfaction of the conditions set forth in Section 3.3 hereof, in connection with the purchase of the Second Lien Notes pursuant to the Second Lien Note Purchase Agreement, the Company agrees to sell the Warrants to each Subscriber, and each Subscriber hereby agrees to purchase the Warrants from the Company in an amount as set forth next to such Subscriber's signature page below, directly or through one or more Affiliates (as hereinafter defined), subject to the terms and subject to the conditions set forth in this Agreement.

2. Representations, Warranties and Agreements.

2.1 Subscribers' Representations, Warranties and Agreements. To induce the Company to issue the Warrants to each Subscriber, each Subscriber hereby makes to the Company those representations and warranties set forth in Section 2.30 of the Second Lien Note Purchase Agreement as if such representations and warranties were set forth in this Agreement, mutatis mutandis, and made by such Subscriber with reference to and for the purposes of this Agreement.

2.2 Company's Representations, Warranties and Agreements. To induce the Subscribers to purchase the Warrants, the Company hereby represents and warrants to the Subscribers and agrees with the Subscribers as follows:

2.2.1 Second Lien Note Purchase Agreement representations and warranties. The Company hereby makes to the Subscribers those representations and warranties set forth in Article IV of the Second Lien Note Purchase Agreement as if such representations and warranties were set forth in this Agreement, mutatis mutandis, and made by the Company with reference to and for the purposes of this Agreement.

2.2.2 Title to Warrants. Upon issuance in accordance with, and payment pursuant to, the terms hereof, the Warrants will be duly authorized and validly issued and, when issued, the Underlying Shares will be duly authorized, validly issued, fully paid and non-assessable. Upon issuance in accordance with, and payment pursuant to, the terms hereof, each Subscriber (or its Affiliates, as applicable) will have good title to its applicable Warrants and, when issued, the Underlying Shares, free and clear of all liens, claims, encumbrances, charges, mortgages, options, pledges, security interests, hypothecations, easements, rights-of-way or encroachments of any nature whatsoever, whether voluntarily incurred or arising by operation of law ("**Liens**"), other than (a) transfer restrictions under federal and state securities laws and (b) Liens imposed solely due to the actions of such Subscriber. Upon issuance in accordance with, and payment pursuant to, the terms hereof, (i) the Warrants and, when issued, the Underlying Shares, will be issued in accordance with law (including applicable state Blue Sky laws) and the governing documents of the Company and will not be issued in violation of any preemptive or similar rights created by law or the governing documents of the Company or any other agreement to which the Company is bound and (ii) the Warrants and, when issued, the Underlying Shares will not be required to be registered under the Securities Act.

2.2.3 Capitalization. The authorized capital stock of the Company on the date hereof, consists of 250,000,000 shares of Common Stock, 121,082,543 shares of which are issued and outstanding, 825,000 shares of Series A convertible preferred stock, 21,645 shares of which are issued and outstanding, 825,000 shares of series B convertible preferred stock, no shares of which are issued and outstanding, 625,000 shares of Series C convertible preferred stock, 614,177 are issued and outstanding and 100,000 shares of series D junior participating preferred stock, no shares of which are issued and outstanding, and no other capital stock. All issued and outstanding shares of the Company's Common Stock (a) have been duly authorized and validly issued, and (b) are fully paid and non-assessable. The rights, preferences, privileges and restrictions of the Common Stock are as stated in the Certificate of Incorporation currently on file with the Delaware Secretary of State and the Registration Rights Agreement. Except as set forth in the periodic reports that the Company has filed on or prior to the date hereof with the U.S. Securities and Exchange Commission (the "**SEC**") (including the exhibits incorporated by reference) in accordance with its obligations under the Exchange Act and the rules and regulations promulgated thereunder (the "**SEC Reports**"), as of the date hereof, no other capital stock, options, units, warrants, rights to purchase (including any preemptive rights, calls or commitments of any character whatsoever) or otherwise acquire or securities that are exercisable, exchangeable or convertible into any shares of Common Stock or other ownership interests in the Company are authorized, issued, reserved for issuance or outstanding (other than herein and pursuant to the Stock Purchase Agreement). Except as set forth in the SEC Reports, the Company has no authorized or outstanding bonds, debentures, notes or other indebtedness the holders of which have the right to vote (or which are convertible into, exchangeable for, or evidence the right to subscribe for or acquire securities having the right to vote) with the holders of capital stock of the Company on any matter. Except as set forth in the SEC Reports, there are no contracts to which the Company is party or by which it is bound to (x) repurchase, redeem or otherwise acquire any shares of capital stock of the Company or (y) vote or dispose of any capital stock of the Company. There are no irrevocable proxies and no voting agreements with respect to any capital stock of the Company. Except as set forth in the SEC Reports, other than the Registration Rights Agreement, the Company has no agreement, arrangement or understandings to register any securities of the Company under the Securities Act or under any state securities law and has not granted registration rights to any person (other than agreements, arrangements or understandings with respect to registration rights that are no longer in effect as of the date of this Agreement). Immediately following the Closing, and notwithstanding anything contained herein to the contrary, pursuant to the Warrants the Subscribers will in the aggregate beneficially own 6.34% of the issued and outstanding Common Stock of the Company on a non-diluted basis and will beneficially own 4.99% of the Fully Diluted Common Stock (as defined in the Warrant Agreement).

2.2.4 SEC Documents. The Company has timely filed or received the appropriate extension of time within which to file with the SEC all forms, reports, schedules, statements and other documents required to be filed by it since January 1, 2014 under the U.S. Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder (the "**Exchange Act**") and the Securities Act (such documents, as supplemented and amended since the time of filing, collectively, the "**Company SEC Documents**"). The Company SEC Documents, including any financial statements or schedules included therein, at the time filed (and, in the case of registration statements, on the dates of effectiveness) (i) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading and (ii) complied in all material respects with the applicable requirements of the Exchange Act and the Securities Act, as the case may be. The financial statements of the Company included in the Company SEC Documents at the time filed (and, in the case of registration statements, on the dates of effectiveness) were prepared in accordance with accounting principles generally accepted in the United States of America ("**GAAP**") and complied as to form in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto during the periods involved (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by Form 10-Q of the SEC), and fairly present in all material respects (subject in the case of unaudited statements to normal, recurring audit adjustments) the financial position of the Company as at the dates thereof and the results of its operations and cash flows for the periods then ended.

3. Settlement Date and Delivery.

3.1 Closing. The closing of the purchase and sale of the Warrants hereunder (the "**Closing**") shall be held at the same date and time as, and be conditioned on, the closing of the Other Agreements (the date of the Closing being referred to as the "**Closing Date**"). At the Closing, the Company will issue to each of the Subscribers the Warrants, each registered in the name of such Subscriber, its Affiliate or its permitted assignee (as applicable), against such party's performance under the Second Lien Note Purchase.

3.2 Conditions to Closing of the Company.

The Company's obligations to sell and issue the Warrants at the Closing are subject to the fulfillment (or waiver by the Company in writing) of the following conditions:

3.2.1 Representations. The representations made by the Subscribers in Section 2.1 of this Agreement shall be true and correct in all material respects when made, and shall be true and correct in all material respects on and as of the Closing Date.

3.2.2 Covenants. All covenants, agreements and conditions contained in this Agreement to be performed by the Subscribers on or prior to the Closing Date shall have been performed or complied with in all material respects.

3.2.3 No Injunction. There shall not be in force any injunction or order of any court or administrative agency of competent jurisdiction enjoining or prohibiting the consummation transactions contemplated by this Agreement or the Other Agreements.

3.3 Conditions to Closing of the Subscribers.

The Subscribers' obligation to purchase the Warrants at the Closing is subject to the fulfillment (or waiver by each of the Subscribers in writing) on or prior to the Closing Date of each of the following conditions:

3.3.1 Representations and Warranties Correct. The representations and warranties of the Company contained in Section 2.2 of this Agreement shall be true and correct in all material respects.

3.3.2 Covenants. All covenants, agreements and conditions contained in this Agreement to be performed by the Company on or prior to the Closing Date shall have been performed or complied with in all material respects.

3.3.3 Opinion. The Company shall have delivered to the Subscribers an opinion of counsel covering customary matters with respect to the Warrants and the Underlying Shares.

3.3.4 No Injunction. There shall not be in force any injunction or order of any court or administrative agency of competent jurisdiction enjoining or prohibiting the consummation transactions contemplated by this Agreement or the Other Agreements.

3.3.5 Conditions to Closing of the Other Agreements. All conditions to the Subscribers' obligations and the Company's obligation to consummate the Other Agreements (as the same is in effect on the date hereof) shall have been satisfied in full or waived by the party to each of the Other Agreements permitted to waive any such condition, to the extent a Subscriber is a party to such Other Agreements.

3.3.6 Ancillary Documents. The Subscribers and the Company shall have executed and delivered the Other Agreements, to the extent a Subscriber is a party to such Other Agreements.

3.3.7 Certificates. The Company shall deliver or cause to be delivered to the Subscribers a certificate representing its applicable Warrants.

4. Restrictions on Transfer.

4.1 Securities Law Restrictions. Each Subscriber agrees not to, except to an affiliate of such Subscriber, sell, transfer, pledge, hypothecate or otherwise dispose of all or any part of the Warrants unless, prior thereto (a) a registration statement on the appropriate form under the Securities Act and applicable state securities laws with respect to the Warrants proposed to be transferred shall then be effective or (b) the Company has received an opinion from counsel reasonably satisfactory to the Company, that such registration is not required because such transaction is exempt from registration under the Securities Act and the rules promulgated by the Securities and Exchange Commission thereunder and with all applicable state securities laws.

4.2 Restrictive Legends. All certificates representing the Warrants shall have endorsed thereon legends substantially as follows:

"THE SECURITIES REPRESENTED HEREBY, AND THE SECURITIES ISSUABLE HEREBY, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS AND NEITHER THE SECURITIES NOR ANY INTEREST THEREIN MAY BE OFFERED, SOLD, TRANSFERRED, PLEDGED OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT OR SUCH LAWS OR AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT AND SUCH LAWS WHICH, IN THE OPINION OF COUNSEL FOR THE COMPANY, IS AVAILABLE."

4.3 Registration Rights. Subscribers acknowledge that the Warrants are being purchased pursuant to an exemption from the registration requirements of the Securities Act and the Common Stock underlying the Warrants will become freely tradable only after certain conditions are met or they are registered pursuant to the Registration Rights Agreement or otherwise.

5. Other Agreements.

5.1 Further Assurances.

5.1.1 Each of the Company and each Subscriber agrees to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Agreement and to permit the Company to effectuate the Other Agreements. Each Subscriber and the Company shall each, and shall each cause their respective affiliates to: (a) assemble, prepare, file and/or submit any information (and to supplement such information) as may be reasonably necessary to obtain as promptly as practicable all stockholder, governmental and regulatory consents required to be obtained in connection with the transactions contemplated by this Agreement or the Other Agreements, and (b) use reasonable best efforts to obtain all consents and approvals of third parties or governmental authorities that the Subscribers, the Company, or their respective affiliates are required to obtain in order, and to take such other action as may reasonably be necessary or as another party may reasonably request, to (i) comply with this Agreement and the Other Agreements, (ii) fulfill the conditions set forth in this Agreement and the Other Agreements and (iii) consummate the transactions contemplated by this Agreement and the Other Agreements as soon as practicable; provided that, in connection with the exercise of such reasonable best efforts, no party shall be required to make any payments other than *de minimis* administrative expenses (and the payment of legal expenses associated with the consummation of the transactions contemplated herein).

5.1.2 Proxy Statement and Other Actions. Promptly following the date hereof, the Company shall prepare and file any necessary SEC, NASDAQ or New York Stock Exchange filings relating to the issuance of the Warrants to the Subscribers.

5.2 Notices. All notices and other communications to any party herein to be effective shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail, emailed or sent by telecopy, as follows:

If to the Company to:

BioScrip, Inc.
1600 Broadway, Suite 700
Denver, CO 80202
Attn: Stephen Deitsch, Senior Vice President,
Chief Financial Officer & Treasurer
Email: Stephen.Deitsch@bioscrip.com
Telecopy Number: (720) 468-4040

With a copy (which shall not constitute notice) to:

Dechert LLP
1095 Avenue of the Americas
New York, New York 10036
Attention: Scott M. Zimmerman
Email: Scott.Zimmerman@dechert.com
Telecopy Number: (212) 698-3599

If to a Subscriber, to the address shown next to such Subscriber's signature page.

With a copy (which shall not constitute notice) to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
Attn: Thomas de la Bastide and Kenneth Schneider
1285 Avenue of the Americas, New York, NY 10019
Email: tdelabastide@paulweiss.com, kschneider@paulweiss.com
Telecopy Number: 212-492-0031, 212-492-0303

All such notices and other communications shall be effective upon actual receipt by the relevant Person or, if delivered by overnight courier service, upon the first business day after the date deposited with such courier service for overnight (next-day) delivery or, if sent by telecopy, upon transmittal in legible form by facsimile machine or, if mailed, upon the third business day after the date deposited into the mail or, if delivered by hand, upon delivery or, if emailed, upon receipt by the recipient's email server if directed to the email address provided in this Section 5.2.

5.3 Entire Agreement. This Agreement and the Other Agreements constitute the entire agreement among the parties hereto and thereto and their affiliates regarding the subject matters hereof and thereof and supersede all prior agreements and understandings, oral or written, regarding such subject matters.

5.4 Modifications and Amendments. The terms and provisions of this Agreement may be modified, supplemented or amended only by written agreement executed by all parties hereto.

5.5 Waivers and Consents. The terms and provisions of this Agreement may be waived, or consent for the departure therefrom granted, only by written document executed by the party entitled to the benefits of such terms or provisions. No such waiver or consent shall be deemed to be or shall constitute a waiver or consent with respect to any other terms or provisions of this Agreement, whether or not similar. Each such waiver or consent shall be effective only in the specific instance and for the purpose for which it was given, and shall not constitute a continuing waiver or consent.

5.6 Assignment. The rights and obligations under this Agreement may not be assigned by either party hereto without the prior written consent of the other party, except to another Subscriber or an affiliate of a Subscriber, and any purported assignment in violation of the foregoing shall be void ab initio.

5.7 Benefit. All statements, representations, warranties, covenants and agreements in this Agreement shall be binding on the parties hereto and shall inure to the benefit of the respective successors and permitted assigns of each party hereto. Nothing in this Agreement shall be construed to create any rights or obligations except among the parties hereto, and no person or entity shall be regarded as a third-party beneficiary of this Agreement.

5.8 Governing Law.

5.8.1 This Agreement and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement and the transactions contemplated hereby shall be construed in accordance with and be governed by the law (without giving effect to the conflict of law principles thereof) of the State of New York.

5.8.2 Each party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court for the Southern District of New York, and of the Supreme Court of the State of New York sitting in New York county, and of any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, 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 District Court or New York state court or, to the extent permitted by applicable law, such appellate 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.

5.8.3 Each party irrevocably and unconditionally waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding described in clause 5.8.2 of this Section and brought in any court referred to in clause 5.8.2 of this Section. Each of the parties hereto irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

5.8.4 Each party to this Agreement irrevocably consents to the service of process in the manner provided for notices in Section 5.2. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by law.

5.9 WAIVER OF JURY TRIAL. EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (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.

5.10 Severability. Any provision of this Agreement held to be illegal, invalid or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity or unenforceability without affecting the legality, validity or enforceability of the remaining provisions hereof; and the illegality, invalidity or unenforceability of a particular provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

5.11 No Waiver of Rights, Powers and Remedies. No failure or delay by a party hereto in exercising any right, power or remedy under this Agreement, and no course of dealing between the parties hereto, shall operate as a waiver of any such right, power or remedy of such party. No single or partial exercise of any right, power or remedy under this Agreement by a party hereto, nor any abandonment or discontinuance of steps to enforce any such right, power or remedy, shall preclude such party from any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The election of any remedy by a party hereto shall not constitute a waiver of the right of such party to pursue other available remedies. No notice to or demand on a party not expressly required under this Agreement shall entitle the party receiving such notice or demand to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the party giving such notice or demand to any other or further action in any circumstances without such notice or demand.

5.12 No Liability.

5.12.1 Notwithstanding anything that may be expressed or implied in this Agreement or any document or instrument delivered in connection herewith, the Company, by its acceptance of the benefits of this Agreement, covenants, agrees and acknowledges that no person other than the Subscribers shall have any obligation hereunder or in connection with the transactions contemplated hereby and that it has no rights of recovery against, and no recourse hereunder, under any documents or instruments delivered in connection herewith or in respect of any oral representations made or alleged to be made in connection herewith or therewith, shall be had against, any former, current or future director, officer, agent, affiliate, manager, assignee or employee of the Investor (or any of their successors or permitted assignees), against any former, current or future general or limited partner, stockholder, manager or member of the Subscribers (or any of their successors or permitted assignees) or any affiliate thereof or against any former, current or future director, officer, agent, employee, affiliate, general or limited partner, stockholder, manager or member of any of the foregoing (each, other than the Subscribers, an "**Affiliate**"), whether by the enforcement of any judgment, fine or penalty or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable law, or otherwise; it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on, or otherwise be incurred by any Affiliate, as such, for any obligations of the Subscribers under this Agreement or the transactions contemplated hereby, under any documents or instruments delivered in connection herewith, in respect of any oral representations made or alleged to be made in connection herewith or therewith, or for any claim (whether in tort, contract or otherwise) based on, in respect of, or by reason of, such obligations or their creation.

5.12.2 The Company further agrees that neither it nor any of its affiliates shall have any right of recovery against any Affiliate of any Subscriber, whether by piercing of the corporate veil, by a claim on behalf of the Company against the Subscribers or any of their Affiliates, or otherwise, except to the extent provided in this letter agreement and subject to the terms and conditions hereof. The Company hereby covenants and agrees that it shall not institute, and shall cause its affiliates not to institute, any proceeding or bring any other claim (whether in tort, contract or otherwise) arising under, or in connection with, the Agreement or the transactions contemplated thereby, or in respect of any oral representations made or alleged to be made in connection therewith, against the Subscribers or any Affiliate other than a claim against a Subscriber relating to the breach of any representation, warranty or covenant made by the Subscribers herein.

5.13 Survival of Representations and Warranties and Covenants, Obligations and Agreements. All representations and warranties made by the parties hereto in this Agreement or in any other agreement, certificate or instrument provided for or contemplated hereby, shall survive the Closing. Any covenant, obligation or agreement to be performed under this Agreement by the Company or the Subscribers shall survive if ongoing or until fully performed or satisfied.

5.14 Headings and Captions. The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and shall in no way modify or affect the meaning or construction of any of the terms or provisions hereof.

5.15 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart to this Agreement by facsimile transmission or by electronic mail in pdf format shall be as effective as delivery of a manually executed counterpart hereof.

5.16 Construction. The words "*include*," "*includes*," and "*including*" will be deemed to be followed by "*without limitation*." Pronouns in masculine, feminine, and neuter genders will be construed to include any other gender, and words in the singular form will be construed to include the plural and vice versa, unless the context otherwise requires. The words "*this Agreement*," "*herein*," "*hereof*," "*hereby*," "*hereunder*," and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The parties hereto intend that each representation, warranty, and covenant contained herein will have independent significance. If any party hereto has breached any representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) which such party hereto has not breached will not detract from or mitigate the fact that such party hereto is in breach of the first representation, warranty, or covenant. References to any section, schedule or annex herein shall mean the sections, schedules and annexes of this Agreement.

5.17 Mutual Drafting. This Agreement is the joint product of the Subscribers and the Company and each provision hereof has been subject to the mutual consultation, negotiation and agreement of such parties and shall not be construed for or against any party hereto.

5.18 No Effect on Lender Relationship. The Company (on its behalf and, to the extent possible, on behalf of the stockholders of the Company) and each Subscriber acknowledges and agrees that, notwithstanding anything in this Agreement or the Warrants to the contrary, nothing contained in this Agreement or the Warrants shall affect, limit or impair the rights and remedies of any Subscriber (a) in its or their capacity as a lender or as agent for lenders to the Company or any of its affiliates pursuant to any agreement under which the Company or any of its affiliates has borrowed money, or (b) in its or their capacity as a lender or as agent for lenders to any other person who has borrowed money. Without limiting the generality of the foregoing, any such person, in exercising its rights as a lender, including making its decision on whether to foreclose on any collateral security, will have no duty to consider (x) its or any of its Affiliates' status as a holder of Warrants, (y) the interests of the Company or its affiliates or (z) any duty it may have to any holder of the Company's equity securities (including any other holder of Warrants), except as may be required under the applicable loan documents or by commercial law applicable to creditors generally. No consent, approval, vote or other action taken or required to be taken by the holder of Warrants in such capacity shall in any way impact, affect or alter the rights and remedies of the Subscriber or any of its Affiliates as a lender or agent for lenders.

5.19 Non-Promotion. The Company agrees that it will not, without the prior written consent of the affected Subscriber, in each instance, (a) use in advertising or publicity any name of such Subscriber, or any partner or employee of such Subscriber, nor any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction or simulation thereof owned by such Subscriber, or (b) represent, directly or indirectly, that any product or any service provided by the Company has been approved or endorsed by such Subscriber.

5.20 Use of Logo. The Company grants the Subscribers permission to use any name or logo of the Company or its affiliates in any marketing materials of the Subscribers. The Subscribers shall include a trademark attribution notice giving notice of the Company ownership of its trademarks in the marketing materials in which the Company name and logo appear.

5.21 Lock-up Limitations. Notwithstanding anything in this Agreement or the Warrant, none of the provisions of this Agreement or the Warrant shall in any way limit any Subscriber from engaging in any brokerage, investment advisory, financial advisory, anti-raid advisory, principaling, merger advisory, financing, asset management, trading, market making, arbitrage, investment activity and other similar activities conducted in the ordinary course of their business.

6. Indemnification and Limitation of Liability. The Company shall indemnify the Subscribers with respect to rights and obligations under this Agreement under the same terms, mutatis mutandis, as the Company indemnifies Purchasers pursuant to Section 10.3 of the Second Lien Note Purchase Agreement, and the liability of the Subscribers shall be limited pursuant to the terms of Section 10.3(e) thereof.

7. Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid pursuant to the terms of the Commitment Letter, dated as of June 7, 2017, among the Company and the other signatories party thereto.

[Signature Page Follows]

If the foregoing accurately sets forth our understanding and agreement, please sign the enclosed copy of this Agreement and return it to us.

Very truly yours,

BIOSCRIP, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

ASSF IV AIV B HOLDINGS, L.P.
as a Subscriber

By: ASSF IV AIV B HOLDINGS GP LLC,
its general partner
By: ASSF IV AIV B, L.P.,
its sole member
By: ASSF MANAGEMENT IV, L.P.,
its general partner
By: ASSF MANAGEMENT IV GP LLC,
its general partner

With respect to Warrants to purchase 3.62909% of the Fully Diluted Common Stock outstanding on the date of any exercise of the Warrants

By: /s/ Scott L. Graves
Name: Scott L. Graves
Title: Authorized Signatory

Notice Address:

c/o Ares Management LLC
2000 Avenue of the Stars, 12th Floor
Los Angeles, CA 90067

J.P. MORGAN SECURITIES LLC

as a Subscriber

With respect to Warrants to purchase 0.45364% of the Fully Diluted Common Stock outstanding on the date of any exercise of the Warrants

By: /s/ Jeffrey L. Panzo
Name: Jeffrey L. Panzo
Title: Attorney in fact

Notice Address:

J.P. Morgan Securities LLC
4 New York Plaza, 15th Floor, Mail Code NY1-E054
New York, New York 10004
Attention: Jeffrey L. Panzo
Email: Jeffrey.L.Panzo@JPMorgan.com
Phone No.: (212) 499-1435

GOLDMAN SACHS & CO. LLC

as a Subscriber

With respect to Warrants to purchase 0.68045% of the Fully Diluted Common Stock outstanding on the date of any exercise of the Warrants

By: /s/ Daniel Oneglia
Name: Daniel Oneglia
Title: Managing Director

Notice Address:

Goldman Sachs & Co. LLC
200 West Street, 26th Floor
Attn: Paul Burningham
New York, New York 10282

Signature Page to Warrant Purchase Agreement

WESTERN ASSET MIDDLE MARKET DEBT FUND INC.
WESTERN ASSET MIDDLE MARKET INCOME FUND INC
each as a Subscriber

By: Western Asset Management Company,
as its Investment Manager and Agent

With respect to Warrants to purchase 0.06805% (in the case of Western Asset Middle Market Debt Fund Inc.) and 0.15877% (in the case of Western Asset Middle Market Income Fund Inc) of the Fully Diluted Common Stock outstanding on the date of any exercise of the Warrants

By: /s/ Adam Wright
Name: Adam Wright
Title: Manager, U.S. Legal Affairs

Notice Address:

J.P. Morgan Securities LLC
4 New York Plaza, 15th Floor, Mail Code NY1-E054
New York, New York 10004
Attention: Jeffrey L. Panzo
Email: Jeffrey.L.Panzo@JPMorgan.com
Phone No.: (212) 499-1435

Exhibit 10.6
EXECUTION VERSION

BioScrip, Inc.
1600 Broadway, Suite 700
Denver, CO 80202

June 29, 2017

ASSF IV AIV B HOLDINGS, L.P.

Re: Stock Purchase Agreement

Ladies and Gentlemen:

We are pleased you (the "**Subscriber**" or "**you**") have accepted the offer (in connection with the execution and delivery of the Second Lien Note Purchase Agreement (the "**Second Lien Note Purchase Agreement**"), the Warrant Purchase Agreement (the "**Warrant Purchase Agreement**"), the Warrant Agreement (the "**Warrant Agreement**"), the Registration Rights Agreement (the "**Registration Rights Agreement**," and, together with the Second Lien Note Purchase Agreement, Warrant Purchase Agreement and the Warrant Agreement, the "**Other Agreements**"), each among BioScrip, Inc., a Delaware corporation (the "**Company**"), and the other signatories party thereto and of even date herewith) to purchase an aggregate number of shares of common stock of the Company, par value $0.0001 per share (the "**Common Stock**" or "**Shares**"), equal to the number set forth next to your signature pages below. The terms (this "**Agreement**") on which the Subscriber is willing to purchase the Shares from the Company, and the Company and the Subscriber's agreements regarding such Shares, are as follows:

1. Purchase of the Shares. Subject to satisfaction of the conditions set forth in Section 3.3 hereof, for an amount as set forth next to the Subscriber's signature page below, in United States Dollars and in immediately available funds (such amount, the "**Purchase Price**"), the Company agrees to sell the Shares to the Subscriber, and the Subscriber hereby agrees to purchase the Shares from the Company, directly or through one or more Affiliates (as hereinafter defined), subject to the terms and subject to the conditions set forth in this Agreement.

2. Representations, Warranties and Agreements.

2.1 Subscriber's Representations, Warranties and Agreements. To induce the Company to issue the Shares to the Subscriber, the Subscriber hereby makes to the Company those representations and warranties set forth in Section 2.30 of the Second Lien Note Purchase Agreement as if such representations and warranties were set forth in this Agreement, mutatis mutandis, and made by the Subscriber with reference to and for the purposes of this Agreement.

2.2 Company's Representations, Warranties and Agreements. To induce the Subscriber to purchase the Shares, the Company hereby represents and warrants to the Subscriber and agrees with the Subscriber as follows:

2.2.1 Second Lien Note Purchase Agreement representations and warranties. The Company hereby makes to the Subscriber those representations and warranties set forth in Article IV of the Second Lien Note Purchase Agreement as if such representations and warranties were set forth in this Agreement, mutatis mutandis, and made by the Company with reference to and for the purposes of this Agreement.

2.2.2 Title to Shares. Upon issuance in accordance with, and payment pursuant to, the terms hereof, the Shares will be duly authorized, validly issued, fully paid and non-assessable. Upon issuance in accordance with, and payment pursuant to, the terms hereof, the Subscriber (or its Affiliates, as applicable) will have good title to the Shares, free and clear of all liens, claims, encumbrances, charges, mortgages, options, pledges, security interests, hypothecations, easements, rights-of-way or encroachments of any nature whatsoever, whether voluntarily incurred or arising by operation of law ("**Liens**"), other than (a) transfer restrictions under federal and state securities laws and (b) Liens imposed solely due to the actions of the Subscriber. Upon issuance in accordance with, and payment pursuant to, the terms hereof, (i) the Shares will be issued in accordance with law (including applicable state Blue Sky laws) and the governing documents of the Company and will not be issued in violation of any preemptive or similar rights created by law or the governing documents of the Company or any other agreement to which the Company is bound and (ii) the Shares will not be required to be registered under the Securities Act.

2.2.3 Capitalization. The authorized capital stock of the Company on the date hereof, consists of 250,000,000 shares of Common Stock, 121,082,543 shares of which are issued and outstanding, 825,000 shares of Series A convertible preferred stock, 21,645 shares of which are issued and outstanding, 825,000 shares of series B convertible preferred stock, no shares of which are issued and outstanding, 625,000 shares of Series C convertible preferred stock, 614,177 are issued and outstanding and 100,000 shares of series D junior participating preferred stock, no shares of which are issued and outstanding, and no other capital stock. All issued and outstanding shares of the Company's Common Stock (a) have been duly authorized and validly issued, and (b) are fully paid and non-assessable. The rights, preferences, privileges and restrictions of the Common Stock are as stated in the Certificate of Incorporation currently on file with the Delaware Secretary of State and the Registration Rights Agreement. Except as set forth in the periodic reports that the Company has filed on or prior to the date hereof with the U.S. Securities and Exchange Commission (the "**SEC**") (including the exhibits incorporated by reference) in accordance with its obligations under the Exchange Act and the rules and regulations promulgated thereunder (the "**SEC Reports**"), as of the date hereof, no other capital stock, options, units, warrants, rights to purchase (including any preemptive rights, calls or commitments of any character whatsoever) or otherwise acquire or securities that are exercisable, exchangeable or convertible into any shares of Common Stock or other ownership interests in the Company are authorized, issued, reserved for issuance or outstanding (other than herein and pursuant to the Warrant Purchase Agreement). Except as set forth in the SEC Reports, the Company has no authorized or outstanding bonds, debentures, notes or other indebtedness the holders of which have the right to vote (or which are convertible into, exchangeable for, or evidence the right to subscribe for or acquire securities having the right to vote) with the holders of capital stock of the Company on any matter. Except as set forth in the SEC Reports, there are no contracts to which the Company is party or by which it is bound to (x) repurchase, redeem or otherwise acquire any shares of capital stock of the Company or (y) vote or dispose of any capital stock of the Company. There are no irrevocable proxies and no voting agreements with respect to any capital stock of the Company. Except as set forth in the SEC Reports, other than the Registration Rights Agreement, the Company has no agreement, arrangement or understandings to register any securities of the Company under the Securities Act or under any state securities law and has not granted registration rights to any person (other than agreements, arrangements or understandings with respect to registration rights that are no longer in effect as of the date of this Agreement). Immediately following the Closing, and notwithstanding anything contained herein to the contrary, the shares of Common Stock issued pursuant to this Agreement will represent 4.99% of the issued and outstanding Common Stock of the Company on a non-diluted basis.

2.2.4 SEC Documents. The Company has timely filed or received the appropriate extension of time within which to file with the SEC all forms, reports, schedules, statements and other documents required to be filed by it since January 1, 2014 under the U.S. Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder (the "**Exchange Act**") and the Securities Act (such documents, as supplemented and amended since the time of filing, collectively, the "**Company SEC Documents**"). The Company SEC Documents, including any financial statements or schedules included therein, at the time filed (and, in the case of registration statements, on the dates of effectiveness) (i) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading and (ii) complied in all material respects with the applicable requirements of the Exchange Act and the Securities Act, as the case may be. The financial statements of the Company included in the Company SEC Documents at the time filed (and, in the case of registration statements, on the dates of effectiveness) were prepared in accordance with accounting principles generally accepted in the United States of America ("**GAAP**") and complied as to form in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto during the periods involved (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by Form 10-Q of the SEC), and fairly present in all material respects (subject in the case of unaudited statements to normal, recurring audit adjustments) the financial position of the Company as at the dates thereof and the results of its operations and cash flows for the periods then ended.

3. Settlement Date and Delivery.

3.1 Closing. The closing of the purchase and sale of the Shares hereunder (the "**Closing**") shall be held at the same date and time as, and be conditioned on, the closing of the Other Agreements (the date of the Closing being referred to as the "**Closing Date**"). At the Closing, the Company will issue to the Subscriber the Shares, each registered in the name of the Subscriber, its Affiliate or its permitted assignee (as applicable), against delivery of the Purchase Price in cash on the Closing Date via a wire to an account specified in writing by the Company no later than two (2) business days prior to the Closing.

3.2 Conditions to Closing of the Company.

The Company's obligations to sell and issue the Shares at the Closing are subject to the fulfillment (or waiver by the Company in writing) of the following conditions:

3.2.1 Representations. The representations made by the Subscriber in Section 2.1 of this Agreement shall be true and correct in all material respects when made, and shall be true and correct in all material respects on and as of the Closing Date.

3.2.2 Covenants. All covenants, agreements and conditions contained in this Agreement to be performed by the Subscriber on or prior to the Closing Date shall have been performed or complied with in all material respects.

3.2.3 No Injunction. There shall not be in force any injunction or order of any court or administrative agency of competent jurisdiction enjoining or prohibiting the consummation transactions contemplated by this Agreement or the Other Agreements.

3.3 Conditions to Closing of the Subscriber.

The Subscriber's obligation to purchase the Shares at the Closing is subject to the fulfillment (or waiver by the Subscriber in writing) on or prior to the Closing Date of each of the following conditions:

3.3.1 Representations and Warranties Correct. The representations and warranties of the Company contained in Section 2.2 of this Agreement shall be true and correct in all respects.

3.3.2 Covenants. All covenants, agreements and conditions contained in this Agreement to be performed by the Company on or prior to the Closing Date shall have been performed or complied with in all material respects.

3.3.3 Opinion. The Company shall have delivered to the Subscriber an opinion of counsel, dated as of the date hereof, covering customary matters with respect to the Shares.

3.3.4 No Injunction. There shall not be in force any injunction or order of any court or administrative agency of competent jurisdiction enjoining or prohibiting the consummation transactions contemplated by this Agreement or the Other Agreements.

3.3.5 Conditions to Closing of the Other Agreements. All conditions to the Subscriber's and the Company's obligation to consummate the Other Agreements (as the same is in effect on the date hereof) shall have been satisfied in full or waived by the party to each of the Other Agreements permitted to waive any such condition, to the extent the Subscriber is a party to such Other Agreements.

3.3.6 Ancillary Documents. The Subscriber and the Company shall have executed and delivered the Other Agreements, to the extent the Subscriber is a party to such Other Agreements.

3.3.7 Certificates. The Company shall deliver or cause to be delivered to the Subscriber a book-entry notification, though American Stock Transfer & Trust Company, LLC, the transfer agent for the Common Stock, evidencing the ownership of the Shares or a certificate representing the Shares duly endorsed in blank or accompanied by stock powers duly endorsed in blank in proper form for transfer.

4. Restrictions on Transfer.

4.1 Securities Law Restrictions. Subscriber agrees not to, except to an affiliate of the Subscriber, sell, transfer, pledge, hypothecate or otherwise dispose of all or any part of the Shares unless, prior thereto (a) a registration statement on the appropriate form under the Securities Act and applicable state securities laws with respect to the Shares proposed to be transferred shall then be effective or (b) the Company has received an opinion from counsel reasonably satisfactory to the Company, that such registration is not required because such transaction is exempt from registration under the Securities Act and the rules promulgated by the Securities and Exchange Commission thereunder and with all applicable state securities laws.

4.2 Restrictive Legends. All certificates representing the Shares shall have endorsed thereon legends substantially as follows:

"THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS AND NEITHER THE SECURITIES NOR ANY INTEREST THEREIN MAY BE OFFERED, SOLD, TRANSFERRED, PLEDGED OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT OR SUCH LAWS OR AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT AND SUCH LAWS WHICH, IN THE OPINION OF COUNSEL FOR THE COMPANY, IS AVAILABLE."

4.3 Registration Rights. Subscriber acknowledges that the Shares are being purchased pursuant to an exemption from the registration requirements of the Securities Act and will become freely tradable only after certain conditions are met or they are registered pursuant to the Registration Rights Agreement or otherwise.

5. Other Agreements.

5.1 Further Assurances.

5.1.1 Each of the Company and Subscriber agrees to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Agreement and to permit the Company to effectuate the Other Agreements. The Subscriber and the Company shall each, and shall each cause their respective affiliates to: (a) assemble, prepare, file and/or submit any information (and to supplement such information) as may be reasonably necessary to obtain as promptly as practicable all stockholder, governmental and regulatory consents required to be obtained in connection with the transactions contemplated by this Agreement or the Other Agreements, and (b) use reasonable best efforts to obtain all consents and approvals of third parties or governmental authorities that the Subscriber, the Company, or their respective affiliates are required to obtain in order, and to take such other action as may reasonably be necessary or as another party may reasonably request, to (i) comply with this Agreement and the Other Agreements, (ii) fulfill the conditions set forth in this Agreement and the Other Agreements and (iii) consummate the transactions contemplated by this Agreement and the Other Agreements as soon as practicable; provided that, in connection with the exercise of such reasonable best efforts, no party shall be required to make any payments other than *de minimis* administrative expenses (and the payment of legal expenses associated with the consummation of the transactions contemplated herein).

5.1.2 Proxy Statement and Other Actions. Promptly following the date hereof, the Company shall prepare and file any necessary SEC, NASDAQ or New York Stock Exchange filings relating to the issuance of the Shares to the Subscriber.

5.2 Notices. All notices and other communications to any party herein to be effective shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail, emailed or sent by telecopy, as follows:

If to the Company to:

BioScrip, Inc.
1600 Broadway, Suite 700
Denver, CO 80202
Attn: Stephen Deitsch, Senior Vice President,
Chief Financial Officer & Treasurer
Email: Stephen.Deitsch @bioscrip.com
Telecopy Number: (720) 468-4040

With a copy (which shall not constitute notice) to:

Dechert LLP
1095 Avenue of the Americas
New York, New York 10036
Attention: Scott M. Zimmerman
Email: Scott.Zimmerman@dechert.com
Telecopy Number: (212) 698-3599

If to the Subscriber to:

ASSF IV AIV B Holdings, L.P.
c/o Ares Management LLC
2000 Avenue of the Stars, 12th Floor
Los Angeles, CA 90067
Attn: Felix Bernshteyn
Email: felix.bernshteyn@aresmgmt.com
Telecopy Number: (310) 717-6863

With a copy (which shall not constitute notice) to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
Attn: Thomas de la Bastide and Kenneth Schneider
1285 Avenue of the Americas, New York, NY 10019
Email: tdelabastide@paulweiss.com, kschneider@paulweiss.com
Email: 212-492-0031, 212-492-0303

All such notices and other communications shall be effective upon actual receipt by the relevant Person or, if delivered by overnight courier service, upon the first business day after the date deposited with such courier service for overnight (next-day) delivery or, if sent by telecopy, upon transmittal in legible form by facsimile machine or, if mailed, upon the third business day after the date deposited into the mail or, if delivered by hand, upon delivery or, if emailed, upon receipt by the recipient's email server if directed to the email address provided in this Section 5.2.

5.3 Entire Agreement. This Agreement and the Other Agreements constitute the entire agreement among the parties hereto and thereto and their affiliates regarding the subject matters hereof and thereof and supersede all prior agreements and understandings, oral or written, regarding such subject matters.

5.4 Modifications and Amendments. The terms and provisions of this Agreement may be modified, supplemented or amended only by written agreement executed by all parties hereto.

5.5 Waivers and Consents. The terms and provisions of this Agreement may be waived, or consent for the departure therefrom granted, only by written document executed by the party entitled to the benefits of such terms or provisions. No such waiver or consent shall be deemed to be or shall constitute a waiver or consent with respect to any other terms or provisions of this Agreement, whether or not similar. Each such waiver or consent shall be effective only in the specific instance and for the purpose for which it was given, and shall not constitute a continuing waiver or consent.

5.6 Assignment. The rights and obligations under this Agreement may not be assigned by either party hereto without the prior written consent of the other party, except to an affiliate of the Subscriber, and any purported assignment in violation of the foregoing shall be void ab initio.

5.7 Benefit. All statements, representations, warranties, covenants and agreements in this Agreement shall be binding on the parties hereto and shall inure to the benefit of the respective successors and permitted assigns of each party hereto. Nothing in this Agreement shall be construed to create any rights or obligations except among the parties hereto, and no person or entity shall be regarded as a third-party beneficiary of this Agreement.

5.8 Governing Law.

5.8.1 This Agreement and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement and the transactions contemplated hereby shall be construed in accordance with and be governed by the law (without giving effect to the conflict of law principles thereof) of the State of New York.

5.8.2 Each party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court for the Southern District of New York, and of the Supreme Court of the State of New York sitting in New York county, and of any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, 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 District Court or New York state court or, to the extent permitted by applicable law, such appellate 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.

5.8.3 Each party irrevocably and unconditionally waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding described in clause 5.8.2 of this Section and brought in any court referred to in clause 5.8.2 of this Section. Each of the parties hereto irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

5.8.4 Each party to this Agreement irrevocably consents to the service of process in the manner provided for notices in Section 5.2. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by law.

5.9 WAIVER OF JURY TRIAL. EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (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.

5.10 Severability. Any provision of this Agreement held to be illegal, invalid or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity or unenforceability without affecting the legality, validity or enforceability of the remaining provisions hereof; and the illegality, invalidity or unenforceability of a particular provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

5.11 No Waiver of Rights, Powers and Remedies. No failure or delay by a party hereto in exercising any right, power or remedy under this Agreement, and no course of dealing between the parties hereto, shall operate as a waiver of any such right, power or remedy of such party. No single or partial exercise of any right, power or remedy under this Agreement by a party hereto, nor any abandonment or discontinuance of steps to enforce any such right, power or remedy, shall preclude such party from any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The election of any remedy by a party hereto shall not constitute a waiver of the right of such party to pursue other available remedies. No notice to or demand on a party not expressly required under this Agreement shall entitle the party receiving such notice or demand to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the party giving such notice or demand to any other or further action in any circumstances without such notice or demand.

5.12 No Liability.

5.12.1 Notwithstanding anything that may be expressed or implied in this Agreement or any document or instrument delivered in connection herewith, the Company, by its acceptance of the benefits of this Agreement, covenants, agrees and acknowledges that no person other than the Subscriber shall have any obligation hereunder or in connection with the transactions contemplated hereby and that it has no rights of recovery against, and no recourse hereunder, under any documents or instruments delivered in connection herewith or in respect of any oral representations made or alleged to be made in connection herewith or therewith, shall be had against, any former, current or future director, officer, agent, affiliate, manager, assignee or employee of the Investor (or any of their successors or permitted assignees), against any former, current or future general or limited partner, stockholder, manager or member of the Subscriber (or any of their successors or permitted assignees) or any affiliate thereof or against any former, current or future director, officer, agent, employee, affiliate, general or limited partner, stockholder, manager or member of any of the foregoing (each, other than the Subscriber, an "**Affiliate**"), whether by the enforcement of any judgment, fine or penalty or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable law, or otherwise; it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on, or otherwise be incurred by any Affiliate, as such, for any obligations of the Subscriber under this Agreement or the transactions contemplated hereby, under any documents or instruments delivered in connection herewith, in respect of any oral representations made or alleged to be made in connection herewith or therewith, or for any claim (whether in tort, contract or otherwise) based on, in respect of, or by reason of, such obligations or their creation.

5.12.2 The Company further agrees that neither it nor any of its affiliates shall have any right of recovery against the Subscriber or any of its Affiliates, whether by piercing of the corporate veil, by a claim on behalf of the Company against the Subscriber or any of its Affiliates, or otherwise, except to the extent provided in this letter agreement and subject to the terms and conditions hereof. The Company hereby covenants and agrees that it shall not institute, and shall cause its affiliates not to institute, any proceeding or bring any other claim (whether in tort, contract or otherwise) arising under, or in connection with, the Agreement or the transactions contemplated thereby, or in respect of any oral representations made or alleged to be made in connection therewith, against the Subscriber or any Affiliate other than a claim against the Subscriber relating to the breach of any representation, warranty or covenant made by the Subscriber herein.

5.12.3 Nothing in this Agreement or any of the Other Agreements shall create a fiduciary duty of the Subscriber, or any of its Affiliates, to the Company or any of its equityholders. The Subscriber is not acting as a financial advisor, agent or underwriter to the Company. The Subscriber shall to the fullest extent permitted by law have no duty to refrain from (i) engaging in the same or similar activities or lines of business as the Company or (ii) doing business with any client, customer or vendor of the Company. If the Subscriber acquires knowledge of a potential transaction or matter that may be a corporate opportunity for both the Company and the Subscriber or its Affiliates, then each of the Company (on its behalf and, to the extent possible, on behalf of the stockholders of the Company) to the fullest extent permitted by law renounces any interest or expectancy in such business opportunity and waives any claim that such business opportunity constituted a corporate opportunity that should have been presented to the Company. In the case of any such corporate opportunity, the Subscriber shall to the fullest extent permitted by law not be liable to the Company or its equityholders by reason of the fact that the Subscriber acquires or seeks such corporate opportunity for itself, direct such corporate opportunity to another person or otherwise does not communicate information regarding such corporate opportunity to the Company

5.13 Survival of Representations and Warranties and Covenants, Obligations and Agreements. All representations and warranties made by the parties hereto in this Agreement or in any other agreement, certificate or instrument provided for or contemplated hereby, shall survive the Closing. Any covenant, obligation or agreement to be performed under this Agreement by the Company or the Subscriber shall survive if ongoing or until fully performed or satisfied.

5.14 Headings and Captions. The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and shall in no way modify or affect the meaning or construction of any of the terms or provisions hereof.

5.15 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart to this Agreement by facsimile transmission or by electronic mail in pdf format shall be as effective as delivery of a manually executed counterpart hereof.

5.16 Construction. The words "*include*," "*includes*," and "*including*" will be deemed to be followed by "*without limitation*." Pronouns in masculine, feminine, and neuter genders will be construed to include any other gender, and words in the singular form will be construed to include the plural and vice versa, unless the context otherwise requires. The words "*this Agreement*," "*herein*," "*hereof*," "*hereby*," "*hereunder*," and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The parties hereto intend that each representation, warranty, and covenant contained herein will have independent significance. If any party hereto has breached any representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) which such party hereto has not breached will not detract from or mitigate the fact that such party hereto is in breach of the first representation, warranty, or covenant. References to any section, schedule or annex herein shall mean the sections, schedules and annexes of this Agreement.

5.17 Mutual Drafting. This Agreement is the joint product of the Subscriber and the Company and each provision hereof has been subject to the mutual consultation, negotiation and agreement of such parties and shall not be construed for or against any party hereto.

5.18 No Effect on Lender Relationship. Each of the Company (on its behalf and, to the extent possible, on behalf of the stockholders of the Company) and the Subscriber acknowledges and agrees that, notwithstanding anything in this Agreement to the contrary, nothing contained in this Agreement shall affect, limit or impair the rights and remedies of the Subscriber (a) in its capacity as a lender or as agent for lenders to the Company or any of its affiliates pursuant to any agreement under which the Company or any of its affiliates has borrowed money, or (b) in its capacity as a lender or as agent for lenders to any other person who has borrowed money. Without limiting the generality of the foregoing, any such person, in exercising its rights as a lender, including making its decision on whether to foreclose on any collateral security, will have no duty to consider (x) its or any of its Affiliates' status as a holder of the Common Stock, (y) the interests of the Company or its affiliates or (z) any duty it may have to any holder of the Company's equity securities (including any other holder of Common Stock), except as may be required under the applicable loan documents or by commercial law applicable to creditors generally. No consent, approval, vote or other action taken or required to be taken by the holder of Common Stock in such capacity shall in any way impact, affect or alter the rights and remedies of the Subscriber or any of its Affiliates as a lender or agent for lenders.

5.19 Non-Promotion. The Company agrees that it will not, without the prior written consent of the Subscriber, in each instance, (a) use in advertising or publicity any name of any Subscriber, or any partner or employee of the Subscriber, nor any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction or simulation thereof owned by such Subscriber, or (b) represent, directly or indirectly, that any product or any service provided by the Company has been approved or endorsed by the Subscriber.

5.20 Use of Logo. The Company grants the Subscriber permission to use any name or logo of the Company or its affiliates in any marketing materials of the Subscriber. The Subscriber shall include a trademark attribution notice giving notice of the Company ownership of its trademarks in the marketing materials in which the Company name and logo appear.

5.21 Lock-up Limitations. Notwithstanding anything in this Agreement or the Warrant, none of the provisions of this Agreement or the Warrant shall in any way limit the Subscriber from engaging in any brokerage, investment advisory, financial advisory, anti-raid advisory, principaling, merger advisory, financing, asset management, trading, market making, arbitrage, investment activity and other similar activities conducted in the ordinary course of its business.

5.22 Board Observation Rights. During any time that, and only for so long as, the Subscriber or any of its affiliates holds any debt of the Company or any of its affiliates in an aggregate principal amount of at least $50 million, the Subscriber shall have the right to appoint one nonvoting board observer (the "**Observer**") with respect to the board of directors of Company or any direct or indirect parent of the Company whose board of directors makes managerial decisions for the Company and the Guarantors under the notes to be issued under the Second Lien Note Purchase Agreement (the "**Board**"), or to any committee thereof, such right to include the right to receive all information and materials provided to the members of the Board, in their capacity as such, or to any committee thereof, and to attend all regularly scheduled meetings of the Board, or of any committee thereof; provided that the Observer may be denied access to such meetings and/or materials and information if and to the extent (i) reasonably necessary to preserve any Board attorney- or accountant-client privilege or (ii) the agenda for such meeting or such information or materials provided to the Board would result in a breach of confidentiality or would present a conflict of interest, including, without limitation, any such meeting or information or materials that relate to the notes to be issued pursuant to the First Lien Notes Purchase Agreement, of even date herewith, or the notes to be issued pursuant to the Second Lien Note Purchase Agreement. Notwithstanding the foregoing, (i) the Observer shall receive notice promptly in advance of any meeting of a Board, or any committee thereof, that the Observer is wholly or partially excluded from, and (ii) any written materials and other information, including portions of the minutes of a meeting of a Board, or any committee thereof, that are withheld from the Observer, shall specifically and solely relate to the information that the Observer is excluded from and not any other information. The Observer shall not have any voting rights and shall not be subject to any fiduciary duties applicable to the directors of the Board. The Observer shall sign a non-disclosure agreement reasonably acceptable to the Subscriber and the Company.

5.23 Compliance Assistance. Following the Closing, the Subscriber and the Company shall use reasonable efforts to cooperate to implement a procedure to assist in the compliance with obligations under Section 13D and Section 16 of the Exchange Act during such time as the Subscriber or its Affiliates have a Schedule 13D or Schedule 13G on file with the SEC.

6. Indemnification and Limitation of Liability. The Company shall indemnify the Subscriber with respect to rights and obligations under this Agreement under the same terms, mutatis mutandis, as the Company indemnifies Purchasers pursuant to Section 10.3 of the Second Lien Note Purchase Agreement, and the liability of the Subscriber shall be limited pursuant to the terms of Section 10.3(e) thereof.

7. Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid pursuant to the terms of the Commitment Letter, dated as of June 7, 2017, among the Company and the other signatories party thereto.

[Signature Page Follows]

If the foregoing accurately sets forth our understanding and agreement, please sign the enclosed copy of this Agreement and return it to us.

Very truly yours,

BIOSCRIP, INC.

By: /s/ Stephen Deitsch
Name: Stephen Deitsch
Title: Senior Vice President, Chief Financial Officer and Treasurer

Accepted and agreed this 29th day of June, 2017.

ASSF IV AIV B HOLDINGS II, L.P.
as a Purchaser

By: **ASSF IV AIB B HOLDINGS GP LLC**,
its General Partner
By: **ASSF IV AIV B, L.P.**,
its Sole Member
By: **ASSF MANAGEMENT IV, L.P.**,
its General Partner
By: **ASSF MANAGEMENT IV GP LLC**,
its General Partner

With respect to 6,359,350 shares of Common Stock
For an aggregate Purchase Price of $15,898,375.

By: /s/ Scott L. Graves
Name: Scott L. Graves
Title: Authorized Signatory

Exhibit 99.1

BioScrip Announces New Senior Credit Facility

Agreement Will Immediately Improve Capital Structure, Provide Operational Flexibility, and Result in Excess of $50 million in Liquidity

DENVER, June 29, 2017 -- BioScrip, Inc. (NASDAQ: BIOS) ("BioScrip" or the "Company"), the largest independent national provider of infusion and home care management solutions, today announced that the Company has entered into an agreement with a group of note purchasers, led by funds managed by Ares Management, L.P. (NYSE: ARES), to refinance its existing senior credit facility and priming credit agreement. Under the agreement, the Company entered into a $200 million first lien note facility and a $110 million second lien note facility (the “Facilities”). Upon funding of the Facilities at close, the Company will receive $300 million and will use the proceeds of the Facilities to repay in full all amounts outstanding under its previous senior credit facilities and its priming credit agreement. Also as part of the agreement, the Company will receive a $16 million common stock investment, and will issue common stock warrants with a 10-year term. Cash on hand at close will be in excess of $40 million, and combined with $10 million of additional availability on the second lien note, results in Company liquidity in excess of $50 million. The Company expects the transaction to close on June 29, 2017.

“This agreement greatly strengthens BioScrip, effectively eliminates debt maturities for at least three years, significantly improves our liquidity, and partners BioScrip with top tier investors,” said Daniel E. Greenleaf, President and Chief Executive Officer. “Following the achievement of this important financial milestone, BioScrip will remain focused on accelerating the growth of our profitable business segments and driving operational efficiencies throughout the organization. Additionally, the Company is reiterating its prior guidance of $45 million to $55 million of adjusted EBITDA for the full year of 2017.”

“Our new capital structure best positions BioScrip to achieve its financial and operational goals going forward,” said Stephen Deitsch, SVP, Chief Financial Officer, and Treasurer. “The elimination of over $100 million of debt maturities over the next 24 months greatly increases the Company’s financial flexibility. Additionally, we will reduce our ongoing annual interest rate, and we have the potential to extend both lien maturities to 5 years.”

“We are excited to invest with Dan and the team at BioScrip to provide a capital solution that creates incremental liquidity and business flexibility as the Company executes its strategies to capture growth opportunities within the infusion markets,” said Scott Graves, Partner in the Private Equity Group of Ares Management, L.P.

The sale of common stock in the private placement and the sale of the warrants are exempt from the registration requirements of the Securities Act of 1933, as amended (the “Securities Act”), pursuant to the exemption for transactions by an issuer not involving any public offering under Section 4(a)(2) of the Securities Act. The securities sold and issued in the private placement and the warrants will not be registered under the Securities Act or any state securities laws and may not be offered or sold in the United States absent registration with the SEC or an applicable exemption from the registration requirements.

Forward-Looking Statements – Safe Harbor

This press release includes statements that may constitute "forward-looking statements,” that involve substantial risks and uncertainties. These statements are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. You can identify these statements by the fact that they do not relate strictly to historical or current facts. In some cases, forward-looking statements can be identified by words such as "may," "should," "could," "anticipate," "estimate," "expect," "project," "outlook," "aim," "intend," "plan," "believe," "predict," "potential," "continue" or comparable terms. Because such statements inherently involve risks and uncertainties, actual future results may differ materially from those expressed or implied by such forward-looking statements. Investors are cautioned that any such forward-looking statements are not guarantees of future performance and involve risks and uncertainties, and that actual results may differ materially from those in the forward-looking statements as a result of various factors. Important factors that could cause or contribute to such differences include but are not limited to risks associated with: the Company’s ability to complete the Private Placement on acceptable terms or at all, the Company's ability to integrate the acquisition of Home Solutions, the Company's ability to grow its core Infusion revenues, the Company's ability to continue to experience positive results from its financial improvement plan to reduce operating costs; the Company’s ability to comply with the covenants in its debt agreements; the success of the Company’s initiatives to mitigate the impact of the Cures Act on its business; reductions in federal, state and commercial reimbursement for the Company's products and services; increased government regulation related to the health care and insurance industries; as well as the risks described in the Company's periodic filings with the Securities and Exchange Commission. The Company does not undertake any duty to update these forward-looking statements after the date hereof, even though the Company's situation may change in the future. All of the forward-looking statements herein are qualified by these cautionary statements.

About BioScrip

BioScrip, Inc. is the largest independent national provider of infusion and home care management solutions, with approximately 2,500 teammates and nearly 80 service locations across the U.S. BioScrip partners with physicians, hospital systems, payors, pharmaceutical manufacturers and skilled nursing facilities to provide patients access to post-acute care services. BioScrip operates with a commitment to bring customer-focused pharmacy and related healthcare infusion therapy services into the home or alternate-site setting. By collaborating with the full spectrum of healthcare professionals and the patient, BioScrip provides cost-effective care that is driven by clinical excellence, customer service, and values that promote positive outcomes and an enhanced quality of life for those it serves.

About Ares Management, L.P.

Ares Management, L.P. is a publicly traded, leading global alternative asset manager with approximately $100 billion of assets under management as of March 31, 2017 and more than 15 offices in the United States, Europe and Asia. Since its inception in 1997, Ares has adhered to a disciplined investment philosophy that focuses on delivering strong risk-adjusted investment returns throughout market cycles. Ares believes each of its three distinct but complementary investment groups in Credit, Private Equity and Real Estate is a market leader based on assets under management and investment performance. Ares was built upon the fundamental principle that each group benefits from being part of the greater whole. For more information, visit www.aresmgmt.com.

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