

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

**FORM 10-K**

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
FOR THE FISCAL YEAR ENDED DECEMBER 31, 2015

OR

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

FOR THE TRANSITION PERIOD FROM \_\_\_\_\_ TO \_\_\_\_\_

Commission File Number: 1-36254

**Avid Technology, Inc.**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**04-2977748**  
(I.R.S. Employer  
Identification No.)

**75 Network Drive**  
**Burlington, Massachusetts 01803**  
(Address of Principal Executive Offices, Including Zip Code)

**(978) 640-6789**  
(Registrant's Telephone Number, Including Area Code)

**Securities Registered Pursuant to Section 12(b) of the Act:**

<u>Title of Each Class</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$.01 Par Value	NASDAQ Global Select Market

**Securities Registered Pursuant to Section 12(g) of the Act: None**

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

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

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

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

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

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

(Do not check this box if the registrant is a shell company)

Accelerated Filer   
Smaller Reporting Company

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

The aggregate market value of the voting stock held by non-affiliates of the registrant was approximately \$510,363,334 based on the closing price of the Common Stock on the NASDAQ Global Select Market on June 30, 2015. The number of shares outstanding of the registrant's Common Stock as of March 10, 2016 was 39,629,593.

**DOCUMENTS INCORPORATED BY REFERENCE**

<u>Document Description</u>	<u>10-K Part</u>
Portions of the Registrant's Proxy Statement for the 2016 Annual Meeting of Stockholders	III

**AVID TECHNOLOGY, INC.**  
**FORM 10-K**  
**FOR THE FISCAL YEAR ENDED DECEMBER 31, 2015**

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## CAUTIONARY NOTE ON FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K, or Form 10-K, filed by Avid Technology, Inc. together with its consolidated subsidiaries, “Avid” or the “Company”, or “we”, “us” or “our” unless the context indicates otherwise includes forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. For this purpose, any statements contained in this Form 10-K that relate to future results or events are forward-looking statements. Forward-looking statements may be identified by use of forward-looking words, such as “anticipate,” “believe,” “confidence,” “could,” “estimate,” “expect,” “feel,” “intend,” “may,” “plan,” “should,” “seek,” “will” and “would,” or similar expressions.

Forward-looking statements may involve subjects relating to the following:

- our ability to successfully implement our Avid Everywhere strategic plan and other strategic initiatives, including our cost saving strategies;
- our ability to develop, market and sell new products and services;
- anticipated trends relating to our sales, financial condition or results of operations, including our shift to a recurring revenue model and complex enterprise sales with elongated sales cycles;
- our ability to achieve our goal of expanding our market positions;
- the anticipated performance of our products;
- our business strategies and market positioning;
- our ability to successfully consummate acquisitions or investment transactions and successfully integrate acquired businesses including the acquisition of Orad Hi-Tech Ltd (“Orad”), into our operations;
- our anticipated benefits and synergies from and the anticipated financial impact of any acquired business (including Orad);
- the anticipated trends and developments in our markets and the success of our products in these markets;
- our ability to mitigate and remediate effectively the material weaknesses in our internal control over financial reporting, and the expected timing thereof;
- our capital resources and the adequacy thereof;
- our ability to service our debt and meet the obligations thereunder, including our ability to satisfy our conversion and repurchase obligations under our convertible senior notes due 2020;
- the outcome, impact, costs and expenses of any litigation or government inquiries to which we are or become subject;
- the effect of the continuing worldwide macroeconomic uncertainty on our business and results of operation;
- the expected timing of recognition of revenue backlog as revenue, and the timing of recognition of revenues from subscription offerings;
- estimated asset and liability values and amortization of our intangible assets;
- our compliance with covenants contained in the agreements governing our indebtedness;
- changes in inventory levels;
- seasonal factors;
- plans regarding repatriation of foreign earnings;
- fluctuations in foreign exchange and interest rates; and
- the risk of restatement of our financial statements.

Actual results and events in future periods may differ materially from those expressed or implied by the forward-looking statements in this Form 10-K. There are a number of factors that could cause actual events or results to differ materially from those indicated or implied by forward-looking statements, many of which are beyond our control, including the risk factors discussed in Item 1A of this Form 10-K. In addition, the forward-looking statements contained in this Form 10-K represent our estimates only as of the date of this filing and should not be relied upon as representing our estimates as of any subsequent date. While we may elect to update these forward-looking statements in the future, we specifically disclaim any obligation to do so, whether to reflect actual results, changes in assumptions, changes in other factors affecting such forward-looking statements or otherwise.

The information included under the heading “Stock Performance Graph” in Item 5 of this Form 10-K is “furnished” and not “filed” and shall not be deemed to be “soliciting material” or subject to Regulation 14A, shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or the Exchange Act, or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Exchange Act or the Securities Act of 1933, as amended, or the Securities Act, except to the extent that we specifically incorporate it by reference.

We own or have rights to trademarks and service marks that we use in connection with the operation of our business. Avid is a trademark of Avid Technology, Inc. Other trademarks, logos, and slogans registered or used by us and our subsidiaries in the United States and other countries include, but are not limited to, the following: Avid Everywhere, Avid Motion Graphics, AirSpeed, EUCON, iNEWS, Interplay, ISIS, Avid MediaCentral Platform, Mbox, Media Composer, NewsCutter, Nitris, Pro Tools, Sibelius and Symphony. Other trademarks appearing in this Form 10-K are the property of their respective owners.

## PART I

### ITEM 1. BUSINESS

#### OVERVIEW

We provide an open, integrated, and comprehensive technology platform, along with applications and services that enable the creation, distribution, and monetization of audio and video content. Specifically, we develop, market, sell, and support software and hardware for digital media content production, management and distribution. Digital media are video, audio or graphic elements in which the image, sound or picture is recorded and stored as digital values, as opposed to analog or tape-based signals. Our products are used in production and post-production facilities; film studios; network, affiliate, independent and cable television stations; recording studios; live-sound performance venues; advertising agencies; government and educational institutions; corporate communication departments; and by independent video and audio creative professionals, as well as aspiring professionals. Projects produced using our products include feature films, television programming, live events, news broadcasts, commercials, music, video and other digital media content.

Our mission is to create the most powerful and collaborative media network that enables the creation, distribution and monetization of the most inspiring content in the world. Guided by our Avid Everywhere strategic vision, we strive to deliver the industry's most open, innovative and comprehensive media platform connecting content creation with collaboration, asset protection, distribution and consumption for the media in the world – from the most prestigious and award-winning feature films, music recordings, and television shows, to live concerts and news broadcasts. We have been honored over time for our technological innovation with 14 Emmy Awards, one Grammy Award, two Oscars and the first ever America Cinema Editors Technical Excellence Award.

Our solutions were used in all 2016 Oscar nominated films for Best Picture, Best Film Editing, Best Sound Editing, Best Sound Mixing and Best Original Score. Our audio solutions were also used in all 2016 Grammy nominated recordings for Best Album of The Year, Best Record of the Year and Best Song of the Year.

#### RECENT EVENTS

##### *Restructuring Plan*

In the first quarter of 2016, we commenced restructuring actions that are part of a broad restructuring plan encompassing a series of measures intended to allow us to more efficiently operate in a leaner, and more directed cost structure. These include reductions in our workforce, facilities consolidation, transferring certain business processes to lower cost regions, and reducing other third-party services costs. In connection with this restructuring plan, we expect to incur incremental cash expenditures of approximately \$25 million relating to termination benefits, facility costs, employee overlap expenses and related actions. We anticipate that the restructuring plan will be substantially complete by the end of the second quarter of 2017 and will result in annualized costs savings of appropriately \$68 million.

##### *Financing Agreement with Cerberus Business Finance, LLC*

In connection with the cost efficiency program, on February 26, 2016 (the "Closing Date"), we entered into a Financing Agreement (the "Financing Agreement") with Cerberus Business Finance, LLC, as collateral and administrative agent, and the lenders party thereto (the "Lenders"). Pursuant to the Financing Agreement, the Lenders agreed to provide us with (a) a term loan in the aggregate principal amount of \$100 million (the "Term Loan") and (b) a revolving credit facility (the "Credit Facility") of up to a maximum of \$5 million in borrowings outstanding at any time. All outstanding loans under the Financing Agreement will become due and payable, on the earlier of February 26, 2021 and the date that is 30 days prior to June 15, 2020, the scheduled maturity date of our outstanding 2.00% convertible senior notes due 2020. We borrowed the full amount of the Term Loan, or \$100 million, as of the Closing Date, but did not borrow any amount under the Credit Facility as of the Closing Date. Proceeds from the term loan will be used to replace our existing \$35 million revolving credit facility, finance the Company's efficiency program and other initiatives, and provide operating flexibility throughout the remainder of the transformation in this period of heightened market volatility. We estimate that after paying for both debt issuance costs and the efficiency program, the new financing will provide approximately \$70 million of available liquidity, about half of which replaces the existing revolving credit facility with the remainder providing incremental liquidity to strengthen the Company's balance sheet.

Concurrently with the entry into the Financing Agreement, on February 26, 2016, we terminated our existing Credit Agreement, dated June 22, 2015, with KeyBank National Association, as Administrative Agent and the other lender parties thereto, and repaid all outstanding borrowings under such agreement. There were no penalties paid by us in connection with this termination.

For a more detailed description of the restructuring plan and the Financing Agreement, see Note P, Restructuring Costs and Accruals, and Note R, Long Term Debt and Credit Agreement, to our Condensed Consolidated Financial Statements in Item 8 of this Form 10-K.

## **CORPORATE STRATEGY**

Technology has enabled almost every aspect of how we live to become increasingly digitized, and acceleration of digitization is having a tremendous impact on the media industry and altering the industry value chain. Today's consumers are empowered to create and consume content on-demand-anywhere, anytime. Organizations are under pressure to connect and automate the entire creation-to-consumption workflow. This consumerization has increased the cost and complexity of monetizing assets, which in turn leads to demand for new platforms for distribution and consumption. Organizations need to rely on partners with the strategic understanding and technological expertise to help navigate the challenges they are facing. We believe we are uniquely positioned as a proven and trusted leader to effectively help our customers in the media industry navigate through this period of unprecedented changes.

Our strategy is built on three pillars, Avid Everywhere, The Avid Advantage and the Avid Customer Association ("ACA"). Avid Everywhere is our strategic vision for connecting creative professionals and media organizations with their audiences in a more powerful, efficient, collaborative, and profitable way. Central to the Avid Everywhere vision is the Avid MediaCentral Platform, an open, extensible, and customizable foundation that streamlines and simplifies workflows by tightly integrating all Avid or third party products and services that run on top of it. The platform provides secure and protected access, which enables the creation and delivery of content faster and easier through a set of modular application suites that together represent an open, integrated, and flexible media production and distribution environment for the media industry. The Avid Advantage complements Avid Everywhere by offering a new standard in service, support and education to enable our customers to derive more efficiency from their Avid investment. Finally, the ACA is an association of dedicated media community visionaries, thought leaders and users designed to provide essential strategic leadership to the media industry, facilitate collaboration between Avid and key industry leaders and visionaries, and deepen relationships between our customers and us.

Another key element of our strategy is our transition to a subscription or recurring revenue based model. In 2014 we began offering subscription based licensing options for some of our products and solutions. These licensing options offer choice in pricing and deployment to suit our customers' needs and are expected to increase recurring revenue on a longer term basis. However, during our transition to a recurring revenue model, we expect that our revenue, deferred revenue, and cash flow from operations will be adversely affected as an increasing portion of our total revenue is recognized ratably rather than up front, and as new product offerings are sold at a wider variety of price points.

As a complement to our core strategy, we continue to review and implement programs throughout the Company to reduce costs, increase operational efficiencies, align talent and enhance our business, including in connection with the restructuring plan announced in February 2016, as described in more detail in "Recent Events" as part of which we are realigning our employee base to better serve our customers' needs. We expect these initiatives will be complete in mid-2017.

We have organized our existing hardware and software products and introduced new solutions in four suites, all built upon the MediaCentral Platform. These four suites encompass both audio and video products and solutions and are summarized below:

- *Artist Suite* encompasses all of our products and tools used to create content, including video editing solutions, digital audio workstations (DAW), music notation software, control surfaces and live sound systems. Products and tools in the Artist Suite can be deployed on premise, cloud-enabled, or through a hybrid approach. Users can collaborate to access, edit, and share the same media; and collaborate with others as if they were all in the same facility.
- *Media Suite* includes all of our tools and services used to manage, protect, distribute, and monetize media, including solutions for newsroom management, asset management, and multiplatform distribution. We are also expanding the Media Suite to include metadata tagging, protection and encryption, and analytics.
- *Studio Suite* comprises of in-studio tools for on-air program and viewership enhancement, including 3D real-time graphics, replay servers and sports enhancements.

- *Storage Suite* refers to all of our products and tools used to capture, store, and deliver media, including online storage, nearline storage, and ingest/playout servers. These products and tools work in close concert with the Media Suite's tagging and asset management.

## CUSTOMER MARKETS

We provide digital media content-creation, management and distribution products and solutions to customers in the following markets:

- *Broadcast and Media.* This market consists of broadcast, government, sports and other organizations that acquire, create, process, and/or distribute audio and video content to a large audience for communication, entertainment, analysis, and/or forensic purposes. Customers in this industry rely on workflows that span content acquisition, creation, editing, distribution, sales and redistribution and utilize all content distribution platforms, including web, mobile, internet protocol television, cable, satellite, on-air and various other proprietary platforms. For this market, we offer a range of open products and solutions including hardware- and software-based video- and audio-editing tools, collaborative workflow and asset management solutions, and automation tools, as well as scalable media storage options. Our domain expertise also allows us to provide customers in this market with a range of professional and consulting services. We sell into this market through our direct sales force and resellers.
- *Video and Audio Post and Professional.* This market is made up of individual artists and entities that create audio and video media as a paid service, but do not currently distribute media to end consumers on a large scale. This industry spans a wide-ranging target audience that includes: independent video editors, facilities and filmmakers that produce video media as a business but are not broadcasters; professional sound designers, editors and mixers and facilities that specialize in the creation of audio for picture; songwriters, musicians, producers, film composers and engineers who compose and record music professionally; technicians, engineers, rental companies and facilities that present, record and broadcast audio and video for live performances; and students and teachers in career technical education programs in high schools, colleges and universities, as well as in post-secondary vocational schools, that prepare students for professional media production careers in the digital workplace. For this market, we offer a range of products and solutions based on the Avid MediaCentral Platform, including hardware- and software-based creative production tools, scalable media storage options and collaborative workflows. Our domain expertise also allows us to provide customers in this market with a broad range of professional services. We sell into this market through storefront and on-line retailers, as well as through our direct sales force and resellers.

## PRODUCTS AND SERVICES

### Overview

Our MediaCentral Platform is comprised of a set of modular application suites and new private and public marketplaces that together represent an open, integrated and flexible media production and distribution environment in the industry. With on-premises and cloud-enabled deployment options, as well as subscription, floating and perpetual licensing options, customers have multiple choices over how they use Avid solutions.

The following table presents our net revenues, which includes the amortization of deferred revenues, for the periods indicated (in thousands):

	Year Ended December 31,		
	2015	2014	2013
Video products and solutions	\$ 201,559	\$ 233,464	\$ 243,173
Audio products and solutions	134,812	145,163	152,358
Total products and solutions	336,371	378,627	395,531
Services	169,224	151,624	167,881
Total net revenues	\$ 505,595	\$ 530,251	\$ 563,412

The following table presents our net revenues, which includes the amortization of deferred revenues, as a percentage of total net revenues for the periods indicated:

	Year Ended December 31,		
	2015	2014	2013
Video products and solutions	40%	44%	43%
Audio products and solutions	27%	27%	27%
Total products and solutions	67%	71%	70%
Services	33%	29%	30%
Total net revenues	100%	100%	100%

### ***Video Products and Solutions***

#### *Professional Video Creative Tools*

We offer a range of software and hardware video-editing tools for the professional. Our award-winning Media Composer product line is used to edit video content, including television programming, commercials and films, while our NewsCutter option and iNews systems are designed for the fast-paced world of news production. Our Avid Symphony option is used during the “online” or “finishing” stage of post-production, during which the final program is assembled in high resolution with finished graphics, visual effects, color grading and audio tracks. Our Media Composer | Cloud solution enables broadcast news professionals to acquire, access, edit and finish stories anytime, from everywhere. Leveraging a cloud-based architecture, this solution gives contributors the ability to craft stories where they are happening and speed them to air while maintaining connectivity with the newsroom operation. In 2014, we released Media Composer version 8 with subscription offerings and updates, and with resolution flexibility and independence, which allows users to manage and edit high-resolution media content with ease. These new versions are designed to extend the production capabilities of these solutions and demonstrates our continuing commitment to provide tools that allow for improved creativity and productivity of the professional editor, delivered in a way most attractive to the user. In April 2015, we introduced the Avid Artist | DNxIO, a hardware interface designed to accelerate high-resolution video production. When combined with the industry’s preeminent Media Composer video editing software, the Avid Artist | DNxIO delivers best-in-class high-res video ingest, editing, monitoring, and output, giving video professionals the flexible, open, and integrated creative tools they need to efficiently create the highest-quality media. Further, because it is built on the Avid MediaCentral Platform, Avid Artist | DNxIO is compatible with any Avid Artist Suite solutions and many third-party creative tools.

Revenues from our professional video creative tools accounted for 10%, 8% and 10% of our net revenues for 2015, 2014 and 2013, respectively.

#### *Media Management Solutions*

Our Avid MediaCentral | UX web and mobile-based apps extend the capability of our Avid Interplay | MAM and Avid Interplay | Production asset management solutions by providing real-time access to media assets for the on-the-go media professional. Avid Interplay | MAM allows users to focus on managing content and workflows by giving them the tools to connect their media operations and business intelligence, control movement of media between various storage systems, configure metadata, and leverage a service-oriented architecture structure to integrate in-house and third-party applications. In April 2015, we introduced Interplay | MAM 5, enabling organizations both large and small to manage the entire content lifecycle and reduce media operation costs. This release completes the integration of all Media Suite modules into the MediaCentral Platform. Avid Interplay | Production enhances production team collaboration by coordinating the collaborative editorial workflow of team members at each site, many of whom may be working on the same projects at the same time. Avid Interplay | Production also manages the detailed composition of a project and provides the ability to track media, production file formats, and a project’s history. In June 2015, we acquired Orad Hi-Tech Systems Ltd. (“Orad”) and integrated its 3D real-time graphics, video servers and related asset management solutions. The acquisition adds the applications to our Studio Suite which we intend to connect to the Avid MediaCentral Platform.

Revenues from media management solutions accounted for 7%, 9% and 8% of our net revenues in 2015, 2014 and 2013, respectively.

### Video Storage and Server Solutions

Our Avid ISIS 5500 and ISIS 7500 shared storage systems are real-time, open solutions that bring the power of shared storage to local, regional, national and multinational broadcasters and post-production facilities at competitive prices. Customers can improve allocation of creative resources and support changing project needs with an open shared storage platform that includes the ISIS file system technology on lower cost hardware, support for third-party applications and streamlined administration to create more content more affordably. In April 2014, we introduced ISIS | 2500 as a near-line storage solution with common off-the-shelf storage with an application layer that provides secure storage and allows customers to extend their library of accessible media assets. In April 2015, we introduced ISIS | 1000 shared storage, bringing small production teams the same collaborative power used on larger-scale productions and news broadcasts-customized for their needs, at a price they can afford. Our on-air server solutions include AirSpeed 5000 and AirSpeed 5500, which enable broadcasters to automate the ingest and playout of television and news programming. The AirSpeed 5000 and 5500 video servers work with a wide range of applications to improve workflow and provide cost-efficient ingest and play to air capabilities for broadcasters of any size.

Revenues from video storage and server solutions accounted for 22%, 25% and 24% of our net revenues in 2015, 2014 and 2013, respectively.

### **Audio Products and Solutions**

#### Digital Audio Software and Workstation Solutions

Our Pro Tools digital audio software and workstation solutions facilitate the audio production process, including music and sound creation, recording, editing, signal processing, integrated surround mixing and mastering, and reference video playback. The Pro Tools platform supports a wide variety of internally developed and third-party software plug-ins and integrated hardware. Pro Tools solutions are offered at a range of price points and are used by professionals and aspiring professionals in music, film, television, radio, game, Internet and other media production environments. In January 2015, we announced Pro Tools version 12 with subscription offerings and new features and updates, including the ability to collaborate over the cloud, as well as Pro Tools | First, which allows beginners to access the same music creation tools used by professionals. In January 2016, we introduced Pro Tools version 12.5, offering select customers early access to the highly anticipated Avid Cloud Collaboration for Pro Tools. Avid Cloud Collaboration makes it easy for artists and audio professionals to compose, record, edit, and mix projects from any location worldwide. In support of this release, we also announced that the Artist Community, an online community designed to facilitate collaboration, is now open to everyone.

Our Pro Tools HD family of digital audio workstations, designed to provide high performance, low latency, and great sound quality, provides music production professionals with two powerful solutions, the Pro Tools | HD Native system and the Pro Tools | HDX system. Our Pro Tools | HDX workstation represents a new generation of Pro Tools HD solutions by providing more power, higher audio quality, and easier ways to record, edit and mix demanding audio productions. The Pro Tools | HD Native Thunderbolt, uses a high-speed Thunderbolt interface to connect to a laptop or desktop computer to eliminate monitor latency while recording.

Our audio recording interfaces are designed to deliver high audio quality plus hands-on controls giving musicians the tools to produce quality recordings in less time. Avid partnered with US based Apogee Electronics Corp. and introduced two new audio recording interfaces: The Pro Tools | Duet and Pro Tools | Quartet, comprised of Apogee audio interfaces and Pro Tools software to provide fully EUCON integrated solutions for musicians and audio engineers.

Revenues from digital audio software and workstation solutions accounted for 14%, 16% and 16% of our net revenues in 2015, 2014 and 2013, respectively.

#### Control Surfaces, Consoles and Live-Sound Systems

We offer a range of complementary control surfaces and consoles, leveraging the open industry standard protocol EUCON (Extended User Control) to provide open solutions that meet the needs of customers ranging from the independent professional to the high-end broadcaster. Our System 5 digital audio console is a large-format, scalable console with power on demand to mix large feature films or album projects. The addition of our EUCON Hybrid option extends the control capabilities of a System 5 console, enabling the user to bring audio tracks from multiple digital audio workstations onto the console surface for mixing. Our Pro Tools | S6 control surface for sound recording, mixing and editing was designed as a state-of-the-art modular solution that

scales to meet both current and future customer requirements. S6 is designed for audio professionals in demanding production environments, delivering the performance needed to complete projects faster while producing high quality mixes. Our Artist Series control surfaces offer integrated, hands-on control for price-sensitive applications. Compact and portable, all control surfaces in the Artist line feature EUCON, allowing hands-on control of the user's applications.

Our VENUE product family includes console systems for mixing audio for live sound reinforcement for concerts, theater performances and other public address events. We offer a range of VENUE systems designed for large performance settings, such as stadium concerts, as well as medium-sized theaters and houses of worship. VENUE systems allow the direct integration of Pro Tools solutions to create and playback live recordings. The VENUE | SC48 Remote System features the VENUE | SC48 digital console paired with the VENUE Stage 48 remote box, enabling the user to place input/output devices away from the console and closer to the sources, eliminating cable clutter.

In April 2015, we introduced Avid VENUE| S6L live sound mixing system, featuring a modern, intuitive touch-based interface that enable audio professionals to easily handle the largest, most complex tours and events. VENUE | S6L is a fully modular, scalable live sound mixing system that delivers best-in-class functionality for a range of live sound mixing applications, including front-of-house, monitor, broadcast, theater, and more. Featuring VENUE | E6L, the industry's most advanced live sound engine, VENUE | S6L offers unprecedented power to handle huge channel and plug-in counts at the lowest possible latency. VENUE | S6L ensures the highest sound quality, with all processing at 96 Hz, and support for higher sample rates is possible given the significant processing power available. Furthermore, VENUE | S6L is a networked system and can be customized to meet the needs and budget of essentially any professional production.

Revenues from control surfaces and live systems accounted for 10%, 10% and 9% of our net revenues in 2015, 2014 and 2013, respectively.

### Notation Software

Our Sibelius-branded software allows users to create, edit and publish musical scores. Sibelius software is used by composers, arrangers and other music professionals. Student versions are also available to assist in the teaching of music composition and score writing. In 2015 we introduced Sibelius | Cloud Publishing, which allows users to view, play, transpose, print and purchase scores using current web browsers and mobile devices. The newest version of our musical notation software, Sibelius 8.1, helps composers to create beautiful, accurate and easy-to-read scores. As part of a series of regular updates delivered through Avid All Access Plans, Sibelius 8.1 introduces several of the customer community's top requests, demonstrating Avid's commitment to listening to the needs of customers, a key tenet of Avid Everywhere. Sibelius music notation software offers sophisticated, yet easy-to-use tools that are proven and trusted by composers, arrangers, publishers, educators, and students alike. We also offer Avid Scorch, an application for the Apple iPad mobile device that turns an iPad into an interactive score library with access to sheet music through an in-app store with more than 150,000 premium titles.

### **Professional Services and Customer Care**

Our Professional Services team delivers workflow design and consulting; program and project management; system installation and commissioning; custom development and role-based product level training. The Professional Services team facilitates the engagement with our customers to maximize their investment in technology; increase their operational efficiency; and enable them to reduce deployment risk and implement our solutions.

Our Education team delivers public and private training to our customers and alliance partners to ensure that they have the necessary skills and technical competencies to deploy, use, administer and create Avid solutions. The Education team develops and licenses curriculum content for use by third party Avid Learning partners to deliver training to customers, users and alliance partners. The Education team includes the Avid Certification program which validates the skills and competency of Avid users, administrators, instructors, support representatives and developers.

Our Customer Care team provides customers with a partner committed to giving them help and support when they need it. We offer a variety of services contracts and support plans, allowing each customer to select the level of technical and operational support that they need to maintain their operational effectiveness. Our global Customer Care team of more than 300 in-house and third-party industry professionals offers a blend of technology expertise and real-world experience from throughout the audio, visual, and entertainment industries. The team's mission is to provide timely, informed responses to our customers' issues and proactive maintenance for our solutions to help our customers maintain high standards of operational effectiveness.

## COMPETITION

Our customer markets are highly competitive and subject to rapid change and declining average selling prices. The competitive landscape is fragmented with a large number of companies providing various types of products and services in different markets and geographic areas. We provide integrated solutions that compete based on total value workflow, features, quality, service and price. Companies with which we compete in some contexts may also act as our partners in other contexts, such as large enterprise customer environments.

Certain companies that compete with us across some of our products and solutions are listed below by the market in which they compete:

- **Broadcast and Media:** The Associated Press Inc., Belden Inc., Bitcentral Inc., Dalet S.A., EVS Corporation, Harmonic Inc., Imagine Communications Corp, Ross Video Limited and Vizrt Ltd., among others.
- **Audio and Video Post and Professional:** Ableton AG, Autodesk Inc., Blackmagic Design Pty Ltd, Harman International Industries Inc., Universal Audio Inc. and Yamaha Corporation, among others.

In addition, we compete across both previously mentioned markets with companies such as Adobe Systems Incorporated, Apple Inc., Editshare LLC, Snell Advanced Media, Sony Corporation and EMC Corporation.

Some of our principal competitors are substantially larger than we are and have greater financial, technical, marketing and other resources than we have. For a discussion of these and other risks associated with our competitors, see “Risk Factors” in Item 1A of this Form 10-K.

## OPERATIONS

### *Sales and Services Channels*

We market and sell our products and solutions through a combination of direct, indirect and digital sales channels. Our direct sales channel consists of internal sales representatives serving select customers and markets. Our indirect sales channels include global networks of independent distributors, value-added resellers, dealers and retailers. Our digital sales channel is represented by the online Avid Marketplace.

We have significant international operations with offices in 24 countries and the ability to reach over 130 countries through a combination of our direct sales force and resellers. Sales to customers outside the United States accounted for 63%, 64% and 61%, respectively, of our net revenues in 2015, 2014 and 2013. Additional information about the geographic breakdown of our revenues and long-lived assets can be found in Note Q to our Consolidated Financial Statements in Item 8 of this Form 10-K. For additional information about risks associated with our international operations, see “Risk Factors” in Item 1A of this Form 10-K.

We generally ship our products shortly after the receipt of an order. However, a high percentage of our revenues has historically been generated in the third month of each fiscal quarter and concentrated in the latter part of that month. Orders that may exist at the end of a quarter and have not been shipped are not recognized as revenues and are included in revenue backlog.

Certain orders included in revenue backlog may be reduced, canceled or deferred by our customers. Our revenue backlog, as we define it, consists of firm orders received and includes both (i) orders where the customer has paid in advance of our performance obligations being fulfilled, and (ii) orders for future product deliveries or services that have not yet been invoiced by us. The expected timing of the recognition of revenue backlog into revenue is based on current estimates and could change based on a number of factors, including (i) the timing of delivery of products and services, (ii) customer cancellations or change orders, (iii) changes in the estimated period of time Implied Maintenance Release PCS is provided to customers or (iv) changes in accounting standards or policies. Implied Maintenance Release PCS, as we define it, is the implicit obligation to make such software updates available to customers over a period of time which represents implied post-contract customer support and is deemed to be a deliverable in each arrangement and accounted for as a separate element. As there is no industry standard definition of revenue backlog, our reported revenue backlog may not be comparable with other companies. Additional information on our revenue backlog can be found in “Management’s Discussion and Analysis of Financial Condition and Results of Operation.”

We provide customer care services directly through regional in-house and contracted support centers and major-market field service representatives and indirectly through dealers, value-added resellers and authorized third-party service providers. Depending on the solution, customers may choose from a variety of support offerings, including telephone and online technical

support, on-site assistance, hardware replacement and extended warranty, and software upgrades. In addition to customer care services, we offer a broad array of professional services, including installation, integration, planning and consulting services, and customer training.

### ***Manufacturing and Suppliers***

Our internal manufacturing operations consist primarily of the testing of subassemblies and components purchased from third parties, the duplication of software, and the configuration, final assembly and testing of board sets, software, related hardware components and complete systems. In addition to our internal manufacturing operations, we rely on a network of contractors around the globe to manufacture many of our products, components and subassemblies. Our products undergo testing and quality assurance at the final assembly stage. We depend on sole-source suppliers for certain key hardware product components and finished goods, including some critical items. Although we have procedures in place to mitigate the risks associated with our sole-sourced suppliers, we cannot be certain that we will be able to obtain sole-sourced components or finished goods from alternative suppliers or that we will be able to do so on commercially reasonable terms without a material impact on our results of operations or financial position. For the risks associated with our use of contractors and sole-source vendors, see “Risk Factors” in Item 1A of this Form 10-K.

Our company-operated manufacturing facilities, primarily for final assembly and testing of certain products, are located in: Kfar Saba, Israel, Dublin, Ireland and Mountain View, California. Our Dublin facility is ISO 14001, *Environmental Management System*, certified.

We and our contract manufacturers manufacture our products at a relatively limited number of different facilities located throughout the world, and, in most cases, the manufacturing of each of our products is concentrated in one or a few locations. An interruption in manufacturing capabilities at any of these facilities, as a result of equipment failure or other reasons, could reduce, delay or prevent the production of our products. Because some of our manufacturing or our contract manufacturer’s operations are located outside of the United States, including in Ireland, China and Thailand, those manufacturing operations are also subject to additional challenges and risks associated with international operations. For these and other risks associated with our manufacturing operations, see “Risk Factors” in Item 1A of this Form 10-K.

### ***Research and Development***

We are committed to delivering best-in-class digital media content-creation solutions that are designed for the unique needs, skills and sophistication levels of our target customer markets. Having helped establish the digital media technology industry, we are building on a 25+ year heritage of innovation and leadership in developing content-creation solutions. We have research and development, or R&D, operations around the globe. Our R&D efforts are focused on the development of digital media content-creation, distribution, and monetization tools that operate primarily on the Mac, Windows and Linux platforms. Our R&D efforts also include networking and storage initiatives intended to deliver standards-based media transfer and media asset management tools, as well as stand-alone and network-attached media storage systems for workgroups. In addition to our internal R&D efforts, we outsource a significant portion of certain R&D projects to internationally based partners in Kiev, Ukraine and, to a lesser extent, Thailand. Our R&D expenditures for 2015, 2014 and 2013 were \$95.9 million, \$90.4 million and \$95.2 million, respectively, which represented 19%, 17% and 17%, respectively, of our net revenues. For the risks associated with our use of partners for R&D projects, see “Risk Factors” in Item 1A of this Form 10-K.

Our company-operated R&D operations are located in: Burlington, Massachusetts; Mountain View, California; Berkeley, California; Santa Cruz, California; Munich, Germany; Kaiserslautern, Germany; Kfar Saba, Israel; Szczecin, Poland; and Montreal, Canada. We also partner with a vendor in Ukraine for outsourced R&D services and a vendor in Thailand for hardware R&D services. We also have been building our own development team in Taiwan.

### ***Intellectual Property***

We regard our software and hardware as proprietary and protect our proprietary interests under the laws of patents, copyrights, trademarks and trade secrets, as well as through contractual provisions.

We have obtained patents and have registered copyrights, trademarks and service marks in the United States and in many foreign countries. At December 31, 2015, we held 172 U.S. patents, with expiration dates through 2033, and had 24 patent applications pending with the U.S. Patent and Trademark Office. We have also registered or applied to register various trademarks and service marks in the United States and a number of foreign countries, including Avid, Avid Everywhere, Media Composer, Pro Tools and

Sibelius. As a technology company, we regard our patents, copyrights, trademarks, service marks and trade secrets as being among our most valuable assets, together with the innovative skills, technical competence and marketing abilities of our personnel.

Our software is licensed to end users pursuant to shrink-wrap, embedded, click-through or signed license agreements. Our products generally contain features to guard against unauthorized use. Policing unauthorized use of computer software is difficult, and software piracy is a persistent problem for us, as it is for the software industry in general. Although we attempt to protect our intellectual property rights through patents, trademarks, copyrights, licensing arrangements, maintaining certain technology as trade secrets and other measures, we cannot assure you that any patent, trademark, copyright or other intellectual property rights owned by us will not be invalidated, circumvented or challenged, that such intellectual property rights will provide competitive advantages to us, or that any of our pending or future patent applications will be issued with the claims, or the scope of the claims, sought by us, if at all. We cannot assure you that others will not develop technologies that are similar or superior to our technology, duplicate our technology or design around the patents that we own. In addition, effective patent, copyright and trade secret protection may be unavailable or limited in countries in which we do business or may do business in the future. For these and other risks associated with the protection of our intellectual property, see “Risk Factors” in Item 1A of this Form 10-K.

## **HISTORY AND EMPLOYEES**

Avid was incorporated in Delaware in 1987. We are headquartered in Burlington, Massachusetts, with operations in North America, South America, Europe, Asia and Australia. At December 31, 2015, our worldwide workforce consisted of 1,522 employees and 420 external contractors.

## **AVAILABLE INFORMATION**

We make available free of charge on our website, [www.avid.com](http://www.avid.com), copies of our Annual Reports on Form 10-K, our Quarterly Reports on Form 10-Q, our Current Reports on Form 8-K and all amendments to those reports as soon as practicable after filing with the Securities and Exchange Commission, or SEC. Additionally, we will provide paper copies of all of these filings free of charge upon request. Alternatively, these reports can be accessed at the SEC’s Internet website at [www.sec.gov](http://www.sec.gov). The information contained on our web site shall not be deemed incorporated by reference in any filing under the Securities Act or the Exchange Act.

## ITEM 1A. RISK FACTORS

*You should carefully consider the risks and uncertainties described below in addition to the other information included or incorporated by reference in this Form 10-K before making an investment decision regarding our common stock. If any of the following risks were to actually occur, our business, financial condition or operating results would likely suffer, possibly materially, the trading price of our common stock could decline, and you could lose part or all of your investment. Additional risks and uncertainties that we are unaware of, or that we currently believe are not material, may also become important factors that adversely affect our business.*

### **Risks Related to Our Business and Industry**

#### **If we are unable to successfully execute on our strategy, our business, financial condition, and results of operations could be adversely affected.**

We are in the process of transforming our business based on a strategy built on three pillars, Avid Everywhere, The Avid Advantage and the Avid Customer Association. As part of our corporate strategy we have organized our products in four suites, all built upon our MediaCentral Platform. The ongoing implementation of our strategy may require additional capital that we may not have access to on reasonable terms or at all. Additionally, our strategy is requiring us to develop expertise in new areas and establish new competencies either through talent acquisition or internal development, which we may not be able to successfully achieve. Moreover, the pace and scope of the transformation contemplated in our strategy increases the risk that not all of our strategic plans will deliver the expected benefits within the anticipated time frames, or at all. Furthermore, as a part of our strategy we are also identifying and executing on opportunities to reduce operating costs. If we are unable to successfully execute on our strategy, our business, financial condition, and results of operations could be adversely affected.

#### **We operate in highly competitive markets, and our competitors may be able to draw upon a greater depth and breadth of resources than those that are available to us.**

We operate in highly competitive markets characterized by pressure to innovate, expand feature sets and functionality, accelerate new product releases and reduce prices. Markets for certain of our products also have limited barriers to entry. There is an additional risk of consolidation among our competitors, which could result in fewer, more effective competitors. Customers consider many factors when evaluating our products relative to those of our competitors, including innovation, ease of use, price, feature sets, functionality, reliability, performance, reputation, and training and support, and we may not compare favorably against our competitors in all respects. Some of our current and potential competitors have longer operating histories, greater brand recognition and substantially greater financial, technical, marketing, distribution and support resources than we do. As a result, our competitors may be able to deliver greater innovation, respond more quickly to new or emerging technologies and changes in market demand, devote more resources to the development, marketing and sale of their products, successfully expand into emerging and other international markets, or price their products more aggressively than we can.

If our competitors are more successful than we are in developing products or in attracting and retaining customers, our financial condition and operating results could be adversely affected.

#### **The rapid evolution of the media industry is changing our customers' needs, businesses and revenue models, and if we cannot anticipate or adapt quickly, our business will be harmed.**

The media industry has rapidly and dramatically transformed over the past few years and is continuing to do so as free content, minimal entry costs for creation and distribution, and the expansion of mobile devices have become prevalent. As a result, our traditional customers' needs, businesses and revenue models are changing, often in ways that deviate from our core strengths and traditional bases. If we cannot anticipate these changes or adapt to them quickly, our business will be harmed. For example, our customers have to address the increasing digitization of the media industry, which requires the creation of a more seamless value chain between content creation and monetization. Furthermore, because of the consumerization of the media industry, there is more pressure to create media that can be repurposed in a variety of ways in an efficient manner. As a result of these industry changes, traditional advertising channels are also facing competition from web and mobile platforms, and diminished revenues from traditional advertising could cause some customers' budgets for the purchase of our solutions to decline; this may be particularly true among local television stations, which in the past have been an important customer industry for us. Additionally,

our customers may also seek to pool or share facilities and resources with others in their industry and engage with providers of software as a service.

The ongoing rapid evolution of the media industry may reduce demand for some of our existing products and services. New or non-traditional competitors may arise or adapt in response to this evolution of the media industry, which could create downward price pressure on our products and solutions and reduce our market share and revenue opportunities.

**Our success depends in significant part on our ability to provide innovative products and solutions in response to dynamic and rapidly evolving market demand.**

To succeed in our market, we must deliver innovative products and solutions. Innovation requires both that we accurately predict future market trends and customer expectations and that we quickly adapt our development efforts in response. We also have the challenge of protecting our product roadmap and new product initiatives from leaks to competitors that might reduce or eliminate any innovative edge that we seek to gain. Predicting market trends is difficult, as our market is dynamic and rapidly evolving. Additionally, given the complex, sophisticated nature of our solutions and our typically lengthy product development cycles, we may not be able to rapidly change our product direction or strategic course. If we are unable to accurately predict market trends or adapt to evolving market conditions, our ability to capture customer demand will suffer and our market reputation and financial performance will be negatively affected. Even to the extent we make accurate predictions and possess the requisite flexibility to adapt, we may be able to pursue only a handful of possible innovations as a result of limited resources. Our success, therefore, further depends on our ability to identify and focus on the most promising innovations.

When we do introduce new products, our success depends on our ability to manage a number of risks associated with new products including but not limited to timely and successful product launch, market acceptance, and the availability of products in appropriate locations, quantities and costs to meet demand. For example, we have focused a significant part of our development efforts on developing our Avid Everywhere Platform, discussed in the preceding risk factor. There can be no assurance that our efforts will be successful in the near future, or at all, or that our competitors will not take significant market share in similar efforts. If we fail to develop new products and to manage new product introductions and transitions properly, our financial condition and operating results could be harmed.

**We may not be able to achieve the efficiencies, savings and other benefits anticipated from our cost reduction, margin improvement and other business optimization initiatives.**

We are continually reviewing and implementing programs throughout the company to reduce costs, increase efficiencies and enhance our business. We have in the past undertaken and expect to continue to undertake various restructuring activities and cost reduction initiatives in an effort to better align our organizational structure and costs with our strategy. On February 26, 2016, we committed to a restructuring plan that encompasses a series of actions intended to more efficiently operate in a leaner, and more directed cost structure. The actions include reductions in our workforce, facility consolidation, transferring resources to lower cost regions and reducing other third-party services costs. In connection with this restructuring plan, we expect to incur incremental cash expenditures of approximately \$25 million relating to termination benefits, facility costs, employee overlap expenses and related actions. We anticipate that the restructuring plan will be substantially complete by the end of the second quarter of 2017 and will result in annualized costs savings of appropriately \$68 million.

In connection with these activities, we may experience a disruption in our ability to perform functions important to our strategy. Unexpected delays, increased costs, challenges with adapting our internal control environment to a new organizational structure, inability to retain and motivate employees or other challenges arising from these initiatives could adversely affect our ability to realize the anticipated savings or other intended benefits of these activities and could have a material adverse impact on our financial condition and operating results.

**Certain of our enterprise offerings have long and complex sales cycles.**

With our transition to leveraging the Avid MediaCentral platform in our sales process, we have experienced an elongation of the sales process for some of our enterprise offerings. The longevity and complexity in these sales cycles is due to a number of factors, including:

- the need for our sales representatives to educate customers about the uses and benefits of our products and services, including technical capabilities, security features, potential cost savings and return on investment, which are made available in large-scale deployments,;
- the desire of large and medium size organizations to undertake significant evaluation processes to determine their technology requirements prior to making information technology expenditures;
- the negotiation of large, complex, enterprise-wide contracts, as often required by our and our customers' business and legal representatives;
- the need for our customers to obtain requisition approvals from various decision makers within their organizations; and
- customer budget constraints, economic conditions and unplanned administrative delays.

We spend substantial time and money on our sales efforts without any assurance that potential customers will ultimately purchase our solutions. As we target our sales efforts at larger enterprise customers, these trends are expected to continue. Additionally, our enterprise sales pattern has historically been uneven, where a higher percentage of a quarter's total sales occur during the final weeks of each quarter, which is common in our industry. Our long sales cycle for these products makes it difficult to predict when a given sales cycle will close.

**Subscription offerings create risks related to the timing of revenue recognition.**

We sell an increasing portion of our products based on a subscription model. Although the subscription model is designed to increase the number of customers who purchase our products and services on a recurring basis and create a more predictable revenue stream, it creates certain risks and uncertainties related to the timing of revenue recognition and potential reductions in cash flows. A portion of the subscription-based revenue we report each quarter results from the recognition of deferred revenue relating to subscription agreements entered into during previous quarters. A decline in new or renewed subscriptions in any period may not be immediately reflected in our reported financial results for that period but may result in a decline in our revenue in future quarters. If we were to experience significant downturns in subscription sales and renewal rates, our reported financial results might not reflect such downturns until future periods. Our subscription model could also make it difficult for us to rapidly increase our revenues from subscription-based services through additional sales in any period, as revenue from new customers will be recognized over the applicable subscription term. Further, any increases in sales under our subscription sales model could result in decreased revenues over the short term if they are offset by a decline in sales from perpetual license customers. If any of our assumptions about revenue from our new businesses or our addition of a subscription-based model prove incorrect, our actual results may materially differ from those anticipated, estimated or projected. We may be unable to predict subscription renewal rates and the impact these rates may have on our future revenue and operating results.

**If our customers do not renew their subscriptions for our services or if they renew on terms that are less favorable to us, our revenues may decline**

We sell Pro Tools, Media Composer and Sibelius on a subscription basis pursuant to service agreements that are generally month-to-month or one year in length, and we intend to expand our subscription offerings to other products as well. Although many of our service and subscription agreements contain automatic renewal terms, our customers have no obligation to renew their subscriptions for our services after the expiration of their initial subscription period, and some customers elect not to renew. There is a risk that these subscriptions will not be renewed at the same or a higher level of service, for the same number of seats/licenses or for the same duration of time, or at all. Moreover, under certain circumstances, some of our customers have the right to cancel their service agreements prior to the expiration of the terms of their agreements. We may not be able to accurately predict future customer renewal rates. Our customers' renewal rates may decline or fluctuate as a result of a number of factors, including their level of satisfaction with our services, the reliability of our subscription services, the prices of our services, the perceived information security of our systems and services, the prices of services offered by our competitors, mergers and acquisitions affecting our customer base, reductions in our customers' spending levels, or declines in customer activity as a result of economic downturns or uncertainty in financial markets. If our customers do not renew their subscriptions for our services or if they renew on terms less favorable to us, our revenues may decline. Our future growth is also affected by our ability to sell additional features and services to our current customers, which depends on a number of factors, including customers' satisfaction with our products and services, the prices of our offerings and general economic conditions. If our efforts to cross-sell and upsell to our customers are unsuccessful, the rate at which our business grows may decline.

## **Failure of our information systems or breaches of data security could impact our business.**

Our systems and processes involve the storage and transmission of proprietary information and sensitive or confidential data, including personal information of employees, customers and others. In addition, we rely on information systems controlled by third parties. Information system failures, network disruptions and system and data security breaches, manipulation, destruction or leakage, whether intentional or accidental, could harm our ability to conduct our business, impede development, manufacture or shipment of products, interrupt or delay processing of transactions and reporting financial results or result in the unintentional disclosure of proprietary, personal, sensitive or confidential information.

With our development of Avid Everywhere with its public and private marketplaces and cloud based offerings, our and our customer's data and financial and proprietary information could become more susceptible to such failures and data breaches. Such data breaches could expose user data and materially damage business partner and customer relationships, adversely impact the attractiveness of Avid Everywhere for its users and subject us to possible litigation and adversely impact our operations. Additionally, significant or repeated reductions in the performance, reliability, security or availability of our information systems and network infrastructure could significantly harm our brand our reputation and ability to attract and retain existing and potential users, customers, advertisers and content providers.

The Avid Everywhere cloud based offerings depend on the availability and proper functioning of certain third-party services. The failure or improper functioning of these third party services could lead to outages, security breaches and data losses, including loss of customer creative assets. If third-party services become unavailable, we may need to expend considerable resources identifying and integrating alternate providers and could face contractual liabilities, including penalties.

Our security measures may be insufficient to protect our systems against unauthorized access. Data breaches could be caused by, external theft or attack, misconduct by our employees, contractors, or vendors, or many other causes such as power failures, earthquake, fire or other natural disasters or acts of God, which we may be unable to adequately protect against.

Our failure to manage or mitigate any of these risks could have a material adverse impact on our financial condition and operating results.

## **Our international operations expose us to legal, regulatory and other risks that we may not face in the United States.**

We derive more than half of our revenues from customers outside of the United States, and we rely on foreign contractors for the supply and manufacture of many of our products. We also conduct significant research and development activities overseas, including through third-party development vendors. For example, a portion of our research and development is outsourced to contractors operating in Thailand and we have expanded our own development activities to Taiwan, and the Philippines. Further, we expanded our operations into Poland and Israel with the acquisition of Orad. Our international operations are subject to a variety of risks that we may not face in the United States, including:

- the financial and administrative burdens associated with compliance with a myriad of environmental, tax and export laws, as well as other business regulations in foreign jurisdictions, including high compliance costs, inconsistencies among jurisdictions, and a lack of administrative or judicial interpretative guidance;
- reduced or varied protection for intellectual property rights in some countries;
- regional economic downturns;
- economic, social and political instability abroad and international security concerns in general and the risk of war;
- fluctuations in foreign currency exchange rates;
- longer collection cycles for accounts receivable payment cycles and difficulties in enforcing contracts;
- difficulties in managing and staffing international implementations and operations, and executing our business strategy internationally;
- potentially adverse tax consequences, including the complexities of foreign value added or other tax systems and restrictions on the repatriation of earnings;
- increased financial accounting and reporting burdens and complexities;
- difficulties in maintaining effective internal controls over financial reporting and disclosure controls;
- costs and delays associated with developing products in multiple languages; and

- foreign exchange controls that may prevent or limit our ability to repatriate income earned in foreign markets.

Our overall success in international markets depends, in part, on our ability to succeed in differing legal, regulatory, economic, social and political conditions. We may not be successful in developing, implementing or maintaining policies and strategies that will be effective in managing these risks in each country where we do business. Our failure to manage these risks successfully, including developing appropriate contingency plans for our outsourced research and development work, could harm our international operations, reduce our international sales and increase our costs, thus adversely affecting our business, operating results and financial condition.

**We operate in many different jurisdictions and we could be adversely affected by violations of the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act and similar foreign anti-corruption laws.**

The FCPA, and similar foreign anti-corruption laws generally prohibit companies and their intermediaries from offering, promising, authorizing, or making payments to foreign officials for the purpose of influencing any act or decision of such official in his or her official capacity, inducing the official to do any act in violation of his or her lawful duty, or to secure any improper advantage in obtaining or retaining business. Recent years have seen a substantial increase in the global enforcement of anti-corruption laws, with more frequent voluntary self-disclosures by companies, aggressive investigations and enforcement proceedings by both the DOJ and the SEC resulting in record fines and penalties, increased enforcement activity by non-U.S. regulators, and increases in criminal and civil proceedings brought against companies and individuals.

Our internal policies mandate compliance with these anti-corruption laws. We operate in many parts of the world that are recognized as having governmental corruption problems to some degree and where local customs and practices may not foster strict compliance with anti-corruption laws. Our continued operation and expansion outside the United States could increase the risk of such violations in the future. Despite our training and compliance programs, we cannot assure you that our internal control policies and procedures will protect us from unauthorized reckless or criminal acts committed by our employees or agents. In the event that we believe or have reason to believe that our employees or agents have or may have violated applicable anti-corruption laws, including the FCPA, we may be required to investigate or have outside counsel investigate the relevant facts and circumstances, which can be expensive and require significant time and attention from senior management. Violations of these laws may result in severe criminal or civil sanctions, which could disrupt our business and result in a material adverse effect on our reputation, business, results of operations or financial condition.

**Failure of our information systems or breaches of data security could impact our business.**

Our systems and processes involve the storage and transmission of proprietary information and sensitive or confidential data, including personal information of employees, customers and others. In addition, we rely on information systems controlled by third parties. Information system failures, network disruptions and system and data security breaches, manipulation, destruction or leakage, whether intentional or accidental, could harm our ability to conduct our business, impede development, manufacture or shipment of products, interrupt or delay processing of transactions and reporting financial results or result in the unintentional disclosure of proprietary, sensitive or confidential information. With our development of Avid Everywhere with its public and private marketplaces and cloud based offerings, our and our customer's data and financial and proprietary information could become more susceptible to such failures and data breaches. Additionally, significant or repeated reductions in the performance, reliability, security or availability of our information systems and network infrastructure could significantly harm our brand and reputation and ability to attract and retain existing and potential users, customers, advertisers and content providers.

Such information system failures or unauthorized access could be caused by our failure to adequately maintain and enhance these systems and networks, external theft or attack, misconduct by our employees, contractors, or vendors, or many other causes such as power failures, earthquake, fire or other natural disasters. Such information system failures or unauthorized access could expose us, our customers or the individuals affected to a risk of loss or misuse of this information, resulting in litigation and potential liability for us. In addition, the cost and operational consequences of implementing further data protection measures could be significant.

Additionally, the Avid Everywhere cloud based offerings depend on the availability and proper functioning of certain third-party services, including but not limited to cloud provider, database management, backup, monitoring and logging services. The failure or improper functioning of these third party services could lead to outages, security breaches and data losses, including loss of

customer creative assets. If third-party services become unavailable, we may need to expend considerable resources identifying and integrating alternate providers.

**We have a significant relationship with manufacturing and hardware development vendors with operations in China and Thailand. This may reduce our control over the manufacturing activities, provide uncertain cost savings and expose our proprietary assets to greater risk of misappropriation, and changes to those relationships may result in delays or disruptions that could harm our business.**

We rely on vendors for the development and manufacture of certain of our hardware products, primarily in China and Thailand. These relationships provide us with more flexible resource capabilities, access to global talent and cost savings, but also expose us to risks that may not exist or may be less pronounced with respect to our internal operations. We are able to exercise only limited oversight of our contractors, including with respect to their engineering and manufacturing processes, resource allocations, delivery schedules, security procedures and quality control. Language, cultural and time zone differences complicate effective management of contractors that are located abroad. Additionally, competition for talent in certain locations may lead to high turnover rates that disrupt development or manufacturing continuity. The manufacturers we use also manufacture products for other companies, including our competitors. Our contractors could choose to prioritize capacity for other users, increase the prices they charge us or reduce or eliminate deliveries to us, which could have a material adverse effect on our business. Pricing terms offered by contractors may be highly variable over time reflecting, among other things, order volume, local inflation and exchange rates. For example, during the past few years, including in 2015, most of our outsourced manufacturers have been in China, where the cost of manufacturing has been increasing and labor unrest and turn-over rates at manufacturers have been on the rise. Some of our contractor relationships are based on contract, while others operate on a purchase order basis, where we do not have the benefit of written protections with respect to pricing or other critical terms.

Many of our contractors require access to our intellectual property and our confidential and proprietary information to perform their services. Protection of these assets in relevant offshore locations, may be less robust than in the United States. We must rely on policies and procedures we have instituted with our contractors and certain confidentiality and contractual provisions in our written agreements, to the extent they exist, for protection. These safeguards may be inadequate to prevent breaches. If a breach were to occur, available legal or other remedies may be limited or otherwise insufficient to compensate us for any resulting damages.

Furthermore, if one of our international vendors were, for any reason, to cease or experience significant disruptions in its operations, among others as a result of political unrest, we might be unable to replace it on a timely basis with a comparably priced provider. We would also have to expend time and resources to train any new development or manufacturing vendor. If any of the vendors were to suffer an interruption in its business, or experience delays, disruptions or quality control problems in development or manufacturing operations, or if we had to change development or manufacturing vendors, our ability to provide services to our customers would be delayed and our business, operating results and financial condition would be adversely affected.

**Potential acquisitions could be difficult to consummate and integrate into our operations, and they and investment transactions could disrupt our business, dilute stockholder value or impair our financial results.**

As part of our business strategy, from time to time we may seek to grow our business through acquisitions of or investments in new or complementary businesses, technologies or products that we believe can improve our ability to compete in our existing customer markets or allow us to enter new markets. The potential risks associated with acquisitions and investment transactions include, but are not limited to:

- failure to realize anticipated returns on investment, cost savings and synergies;
- difficulty in assimilating the operations, policies and personnel of the acquired company;
- unanticipated costs associated with acquisitions;
- challenges in combining product offerings and entering into new markets in which we may not have experience;
- distraction of management's attention from normal business operations;
- potential loss of key employees of the acquired company;
- difficulty implementing effective internal controls over financial reporting and disclosure controls and procedures;
- impairment of relationships with customers or suppliers;

- possibility of incurring impairment losses related to goodwill and intangible assets; and
- unidentified issues not discovered in due diligence, which may include product quality issues or legal or other contingencies.

In order to complete an acquisition or investment transaction, we may need to obtain financing, including through the incurrence of borrowings or the issuance of debt or equity securities. This could potentially dilute stockholder value for existing stockholders. We may borrow to finance an acquisition, and the amount and terms of any potential future acquisition-related borrowings, as well as other factors, could affect our liquidity and financial condition and potentially our credit ratings. We may not be able to consummate such financings on commercially reasonable terms, or at all, in which case our ability to complete desired acquisitions or investments and to implement our business strategy, and as a result our financial results, may be materially impaired. In addition, our effective tax rate on an ongoing basis is uncertain, and business combinations and investment transactions could impact our effective tax rate. We may experience risks relating to the challenges and costs of closing a business combination or investment transaction and the risk that an announced business combination or investment transaction may not close. As a result, any completed, pending or future transactions may contribute to financial results that differ from the investment community's expectations in a given quarter.

**We may not realize the growth opportunities and cost synergies that are anticipated from our acquisition of Orad.**

The benefits we expect to achieve from our acquisition of Orad will depend, in part, on our ability to realize anticipated growth opportunities and cost synergies. Our success in realizing these growth opportunities and cost synergies, and the timing of this realization, depends on the successful integration of Orad's business, operations, products and personnel with ours. Even if we are able to integrate Orad's business with ours successfully, this integration may not result in the realization of the full benefits of the growth opportunities and cost synergies we currently expect within the anticipated time frame or at all because of costs incurred or delays in integrating the companies and other challenges and risks such as, among others those described in the above risk factor *"Potential acquisitions could be difficult to consummate and integrate into our operations, and they and investment transactions could disrupt our business, dilute stockholder value or impair our financial results"* If we are not successful in meeting these challenges, our business, financial and operational results could be materially adversely affected.

**We obtain hardware product components and finished goods under sole-source supply arrangements, and any disruptions to these arrangements could jeopardize the manufacturing or distribution of certain of our hardware products.**

Although we generally prefer to establish multi-source supply arrangements for our hardware product components and finished goods, multi-source arrangements are not always possible or cost-effective. We consequently depend on sole-source suppliers for certain hardware product components and finished goods, including some critical items. We do not generally carry significant inventories of, and may not in all cases have guaranteed supply arrangements for, these sole-sourced items. If any of our sole-source suppliers were to cease, suspend or otherwise limit production or shipment (due to, among other things, macroeconomic events, political crises or natural or environmental disasters or other occurrences), or adversely modify supply terms or pricing, our ability to manufacture, distribute and service our products may be impaired and our business could be harmed. We cannot be certain that we will be able to obtain sole-sourced components or finished goods, or acceptable substitutes, from alternative suppliers or that we will be able to do so on commercially reasonable terms. We may also be required to expend significant development resources to redesign our products to work around the exclusion of any sole-sourced component or accommodate the inclusion of any substitute component.

**We depend on the availability and proper functioning of certain third-party technology that we incorporate into or bundle with our products. Third-party technology may include defects or errors that could adversely affect the performance of our products. If third-party technology becomes unavailable, we may need to expend considerable resources integrating alternative third-party technology or developing our own substitute technology.**

We license third-party technology for incorporation into or bundling with our products. This technology may provide us with critical or strategic feature sets or functionality. The profit margin for each of our products depends in part on the royalty, license and purchase fees we pay in connection with third-party technology. To the extent we add additional third-party technology to our products and we are unable to offset associated costs, our profit margins may decline and our operating results may suffer. In addition to cost implications, third-party technology may include defects or errors that could adversely affect the performance of our products, which may harm our market reputation or adversely affect our product sales. Third-party technology may also include certain open source software code that if used in combination with our own software may jeopardize our intellectual

property rights or limit our ability to sell through certain sales channels. If any third-party technology license expires, is terminated or ceases to be available on commercially reasonable terms, we may be required to expend considerable resources integrating alternative third-party technology or developing our own substitute technology. In the interim, sales of our products may be delayed or suspended or we may be forced to distribute our products with reduced feature sets or functionality.

**Lengthy procurement lead times and unpredictable life cycles and customer demand for some of our products may result in significant inventory risks.**

With respect to many of our products, particularly our audio products, we must procure component parts and build finished inventory far in advance of product shipments. Certain of these products may have unpredictable life cycles and encounter rapid technological obsolescence as a result of dynamic market conditions. We procure product components and build inventory based upon our forecasts of product life cycle and customer demand. If we are unable to accurately forecast product life cycle and customer demand or unable to manage our inventory levels in response to shifts in customer demand, the result may be insufficient, excess or obsolete product inventory. Insufficient product inventory may impair our ability to fulfill product orders and negatively affect our revenues, while excess or obsolete inventory may require a write-down on products and components to their net realizable value, which would negatively affect our results of operations.

**Our revenues and operating results depend significantly on our third-party reseller and distribution channels. Our failure to adequately manage the delivery model for our products and services could adversely affect our revenues and gross margins and therefore our profitability.**

We distribute many of our products indirectly through third-party resellers and distributors. We also distribute products directly to end-user customers. Successfully managing the interaction of our direct and indirect channel efforts to reach various potential customer industries for our products and services is a complex process. For example, in response to our direct sales strategies or for other business reasons, our current resellers and distributors may from time to time choose to resell our competitors' products in addition to, or in place of, ours. Moreover, since each distribution method has distinct risks and gross margins, our failure to identify and implement the most advantageous balance in the delivery model for our products and services could adversely affect our revenues and gross margins and therefore our profitability.

In addition, some of our resellers and distributors have rights of return, as well as inventory stock rotation and price protection. Accordingly, reserves for estimated returns and exchanges, and credits for price protection, are recorded as a reduction of revenues upon applicable product shipment, and are based upon our historical experience. Our reliance upon indirect distribution methods may reduce visibility to demand and pricing issues, and therefore make forecasting more difficult and, to the extent that returns exceed estimates, our revenues and operating results may be adversely affected.

**Our products may experience quality issues that could negatively impact our customer relationships, our market reputation and our operating results.**

Our software products, as is typical of sophisticated, complex software, occasionally include coding defects or errors (commonly referred to as "bugs"), which in some cases may interfere with or impair a customer's ability to operate or use the software. Similarly, our hardware products could include design or manufacturing defects that could cause them to malfunction. Although we employ quality control measures, those measures are not designed or intended to detect and remedy all defects. The time and resources available to devote to quality control measures are, in part, dependent on other business considerations, such as meeting customer expectations with respect to release schedules. Any product defects could result in loss of customers or revenues, delays in revenue recognition, increased product returns, damage to our market reputation and significant warranty or other expense and could have a material adverse impact on our financial condition and operating results.

**Our success depends in part on our ability to hire and retain competent and skilled management and technical, sales and other personnel.**

We are highly dependent on the continued service and performance of our management team and key technical, sales and other personnel and our success will depend in part on our ability to retain these employees in a competitive job market. If we fail to appropriately match the skill sets of our employees to our needs we may incur increased costs or experience challenges with execution of our strategic plan. We rely on cash bonuses and equity awards as significant compensation and retention tools for key personnel. In addition to compensation, we seek to foster an innovative work culture to retain employees. We also rely on

the attractiveness of developing technology for the film, television and music industries as a means of retention. We continue to take actions to transform strategically, operationally and culturally and to achieve cost savings, all with the intent to drive improved operating performance both in the U.S and internationally. The uncertainty inherent in our transformational strategy and the resulting workload and stress may make it difficult to attract and retain key personnel and increase turnover of key officers and employees.

Our competitors may in some instances be able to offer a more established or more dynamic work environment, higher compensation or more opportunities to work with cutting-edge technology than we can. If we are unable to retain our key personnel or appropriately match skill sets with our needs, we would be required to expend significant time and financial resources to identify and hire new qualified personnel and to transfer significant internal historical knowledge, which might significantly delay or prevent the achievement of our business objectives.

**Our intellectual property and trade secrets are valuable assets that may be subject to third-party infringement and misappropriation.**

As a technology company, our intellectual property and trade secrets are among our most valuable assets. Infringement or misappropriation of these assets can result in lost revenues to us and thereby ultimately reduce their value. We rely on a combination of patent, copyright, trademark and trade secret laws, as well as confidentiality procedures, contractual provisions and anti-piracy technology in certain of our products to protect our intellectual property and trade secrets. Most of these tools require vigilant monitoring of competitor and other third-party activities and of end-user usage of our products to be effective. These tools may not provide adequate protection in all instances, may be subject to circumvention, or may require a vigilance that in some cases exceeds our capabilities or resources. Additionally, our business model is increasingly focused on software products and as we offer more software products our revenues may be more vulnerable to loss through piracy, which could result in revenue losses for us. While we may seek to engage with those potentially infringing our intellectual property to negotiate a license for use, we also may seek legal recourse, which could be costly. The legal regimes of certain foreign jurisdictions in which we operate, may not protect our intellectual property or trade secrets to the same extent as do the laws of the United States. If our intellectual property or trade secrets are misappropriated in foreign jurisdictions, we may be without adequate remedies to address these issues. Regardless of jurisdiction, assuming legal protection exists and infringement or misappropriation is detected, any enforcement action that we may pursue could be costly and time-consuming, the outcome will be uncertain, and the alleged offender in some cases may seek to have our intellectual property rights invalidated. If we are unable to protect our intellectual property and trade secrets, our business could be harmed.

**Our results could be materially adversely affected if we are accused of, or found to be, infringing third parties' intellectual property rights.**

Because of technological change in our industry, extensive and sometimes uncertain patent coverage, and the rapid issuance of new patents, it is possible that certain of our products or business methods may infringe the patents or other intellectual property rights of third parties. Companies in the technology industry own large numbers of patents, copyrights, trademarks and trade secrets and frequently enter into litigation based on allegations of infringement or other violations of intellectual property rights. Our technologies may not be able to withstand any third-party claims or rights against their use. We have received claims and are subject to litigation alleging that we infringe patents owned by third parties and may in the future be the subject to such claims and litigation. Regardless of the scope or validity of such patents or the merits of any patent claims by potential or actual litigants, we could incur substantial costs in defending intellectual property claims and litigation, and such claims and litigation could distract management's attention from normal business operations. In addition, we provide indemnification provisions in agreements with certain customers covering potential claims by third parties of intellectual property infringement. These agreements generally provide that we will indemnify customers for losses incurred in connection with an infringement claim brought by a third party with respect to our products, and we have received claims for such indemnification. The results of any intellectual property litigation to which we are, or may become, a party, or for which we are required to provide indemnification, may require us to:

- cease selling or using products or services that incorporate the challenged intellectual property;
- make substantial payments for legal fees, settlement payments or other costs or damages;
- obtain a license, which may not be available on reasonable terms, to sell or use the relevant technology, which such license could require royalties that would significantly increase our cost of goods sold; or

- redesign products or services to avoid infringement, which such redesign could involve significant costs and result in delayed and/or reduced sales of the affected products.

**If we are unable to sell our professional products through retail sales channels, our operating results could be adversely affected.**

Following the divestiture of certain of our consumer product lines in July 2012, we continue to have a presence in retail because our professional-level products are offered through specialty retail stores. Our ability to continue to sell our professional products through certain retail sales channels may be impaired because we will sell fewer types of products and fewer units through those channels, impacting retailers' willingness to carry our professional-level products.

**Unanticipated changes in our tax provisions, the adoption of new tax legislation or exposure to additional tax liabilities could affect our profitability.**

We are subject to income and other taxes in the United States and numerous foreign jurisdictions. Our tax liabilities are affected by the amounts we charge for inventory, services, licenses and other items in intercompany transactions. We are also subject to ongoing tax audits in various jurisdictions. Tax authorities may disagree with our intercompany charges, cross-jurisdictional transfer pricing or other matters and assess additional taxes. We regularly assess the likely outcomes of these audits in order to determine the appropriateness of our tax provision. However, there can be no assurance that we will accurately predict the outcomes of these audits, and the amounts ultimately paid upon the resolution of an audit could be materially different from the amounts previously included in our income tax expense and therefore could have a material impact on our tax provision, net income and cash flows. In addition, our tax provision in the future could be adversely affected by changes to our operating structure, changes in the mix of earnings in countries with differing statutory tax rates, changes in the valuation of deferred tax assets and liabilities, changes in tax laws and the discovery of new information in the course of our tax return preparation process.

**We may be subject to litigation, which, if adversely determined, could harm our business and operating results.**

We may be subject to legal claims arising in the normal course of business. The costs of defending any litigation, whether in cash expenses or in management time, could harm our business and materially and adversely affect our operating results and cash flows. An unfavorable outcome in any litigation matter could require that we pay substantial damages, or, in connection with any intellectual property infringement claims, could require that we pay ongoing royalty payments or prohibit us from selling certain of our products. In addition, we may decide to settle any litigation, which could cause us to incur significant settlement costs. A settlement or an unfavorable outcome on any litigation matter could have a material and adverse effect on our business, operating results, financial condition and cash flows.

**A natural disaster or catastrophic event may significantly limit our ability to conduct business as normal and harm our business.**

Our operations and the operations of our customers are vulnerable to interruptions by natural disasters or catastrophic events. For example, we operate a complex, geographically dispersed business, which includes significant personnel, customers and facilities in California near major earthquake fault lines. We may not be able to protect our company from such catastrophic events and we are predominantly uninsured for business continuity losses and disruptions caused by catastrophic events. Disruption or failure of our or our customers' networks or systems, or injury or damage to either parties' personnel or physical infrastructure, caused by a natural disaster, public health crisis, terrorism, cyber attack, act of war or other catastrophic event may significantly limit our or our customers' ability to conduct business as normal, including our ability to communicate and transact with customers, suppliers, distributors and resellers, which may negatively affect our revenues and operating results. Additionally, a natural disaster or catastrophic event could cause us or our customers to suspend all or a portion of operations for a significant period of time, result in a permanent loss of resources, and require the relocation of personnel and material to alternate facilities that may not be available or adequate. Such an event could also cause an indirect economic impact on our customers, which could impact our customers' purchasing decisions and reduce demand for our products and services. A prolonged disruption of our business could also damage our reputation, particularly among our global news organization customers who are likely to require our solutions and support during such time. Any of these factors could cause a material adverse impact on our financial condition and operating results.

## **Risks Related to Our Liquidity and Financial Performance**

### **If we are not able to generate and maintain adequate liquidity our ability to operate our business could be adversely affected.**

Generating and maintaining adequate liquidity is important to our business operations. We meet our liquidity needs primarily through cash generated by operations, proceeds from our issuance of 2.00% convertible senior notes due 2020, and borrowings represented by the Term Loan under the Financing Agreement. We also have the ability to borrow up to \$5.0 million under the Credit Facility. We have also undertaken significant cost cutting measures, including pursuant to the restructuring plan we announced in February 2016, and we may take additional measures to further improve our liquidity. Significant fluctuations in our cash balances could harm our ability to meet our immediate liquidity needs, impair our capacity to react to sudden or unexpected contractions or growth in our business, reduce our ability to withstand a sustained period of economic crisis, and impair our ability to compete with competitors with greater financial resources. In addition, fluctuations in our cash balances could cause us to draw on our Credit Facility and therefore reduce available funds under the Credit Facility (see “Management’s Discussion and Analysis of Financial Condition and Results of Operation - Liquidity and Capital Resources” in Item 7 of this Form 10-K). If we are unable to generate sufficient cash flow or our borrowings are not sufficient, our liquidity may significantly decrease, which could have an adverse effect on our business.

### **Restrictions in the Financing Agreement may limit our activities.**

The Financing Agreement contains restrictive covenants that limit our ability to engage in activities that could otherwise benefit us, including, among other things, limitations on our ability to make investments, incur additional indebtedness, issue equity, sell assets, pay dividends and make other restricted payments, and create liens. We are also required to comply on an ongoing basis with certain financial covenants, including a maximum leverage ratio and an annual limit on the amount of our capital expenditures. Failure to comply with any of these restrictions or covenants may result in an event of default under the Financing Agreement, which could permit acceleration of the outstanding indebtedness under the Financing Agreement and require us to repay such indebtedness before its scheduled due date. Certain events of default under the Financing Agreement may also give rise to a default under our convertible notes due 2020 or other future indebtedness. If an event of default were to occur, we might not have sufficient funds available to make the payments required. If we are unable to repay amounts owed, our lenders may be entitled to foreclose on and sell substantially all of our assets, which secure our borrowings under the Financing Agreement.

### **Our debt levels increased significantly as a result of our entry into the Financing Agreement, our issuance of the 2.00% Convertible Senior Notes due 2020 (“Notes”) and our borrowings under the Term Loan, and our substantial indebtedness could adversely affect our business, cash flow and results of operations.**

Our indebtedness increased by \$195 million as a result of our entry into the Financing Agreement in February 2016 and our issuance of the Notes in June 2015. We also borrowed \$100.0 million under the Term Loan. This increased level of indebtedness may:

- require us to dedicate a greater percentage of our cash flow from operations to payments on our debt, thereby reducing the availability of cash flow to fund capital expenditures, pursue other acquisitions or investments and use for general corporate purposes;
- increase our vulnerability to general adverse economic conditions, including increases in interest rates with respect to borrowings under the Financing Agreement that bear interest at variable rates or when our indebtedness is being refinanced;
- limit our ability to obtain additional financing; and
- limit our flexibility in planning for, or reacting to, changes in or challenges relating to our business and industry, creating competitive disadvantages compared to other competitors with lower debt levels and borrowing costs.

We cannot assure you that our cash flow from operations, combined with any additional borrowings available to us, will be sufficient to enable us to repay our indebtedness, or to fund other liquidity needs. We may incur additional indebtedness in the future, which could cause these risks to intensify. If we are unable to generate sufficient cash flows, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial

condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations.

**We have deferred a significant portion of revenues from customer transactions occurring prior to 2011 to subsequent periods. The deferred revenues resulted in our reporting net income for the fiscal years 2012, 2013, 2014 and 2015. However, as deferred revenues from periods prior to 2011 are amortized, there are no assurances that we will be able to report net income in future periods.**

As a result of the restatement of our September 30, 2012 and prior financial statements, which was completed in 2014, we have deferred a significant portion of revenues from customer transactions occurring prior to 2011 to subsequent periods. The deferred revenue resulted in our reporting net income of approximately \$2 million in 2015, \$15 million in 2014, and \$21 million in 2013 and also adversely affected our stockholders' equity and working capital for those periods. As this deferred revenue is amortized, there are no assurances that we will be able to report net income in future periods. Our financial results and the impact of the deferred revenue are discussed in "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Item 7 of this Form 10-K.

**Our revenues and operating results are difficult to predict and may fluctuate from period to period.**

Our results of operations have been and may continue to be subject to significant quarterly variation. Our results through 2016 will, in particular, be affected by the amortization of deferred revenues relating to periods prior to 2011. Our revenues and operating results for any particular quarter may also vary due to a number of factors, including, but not limited to, those enumerated under the section "Cautionary Note on Forward-Looking Statements," appearing elsewhere in this Form 10-K and:

- the timing of large or enterprise-wide sales and our ability to recognize revenues from such sales;
- demand planning and logistics;
- reliance on third-party reseller and distribution channels;
- changes in operating expenses;
- price protections and provisions for inventory obsolescence extended to resellers and distributors;
- seasonal factors, such as higher consumer demand at year-end; and
- complex accounting rules for revenue recognition.

The occurrence and interaction of these variables may cause our revenues and operating results to fluctuate from period to period. As a result, period-to-period comparisons of our revenues and operating results may not provide a good indication of our future performance. We cannot be certain when, or if, our operations will be profitable in future periods.

**Our revenue backlog estimates are based on certain assumptions and are subject to unexpected adjustments and cancellations and backlog orders may not be timely converted to revenues in any particular fiscal period, if at all, or be indicative of our actual operating results for any future period.**

Our revenue backlog, as we define it, consists of firm orders received and includes both (i) orders where the customer has paid in advance of our performance obligations being fulfilled, which are reflected as deferred revenues on our balance sheet, and (ii) orders for future product deliveries or services that have not yet been invoiced by us. To the extent that our customers cancel their orders with us or reduce their requirements during a particular period for any reason, we will not realize revenue or profit from the associated revenue backlog. Even where a project proceeds as scheduled, it is possible that the customer may default and fail to pay amounts owed to us. Material delays, payment defaults or cancellations could reduce the amount of revenue backlog currently reported, and consequently, could inhibit the conversion of that backlog into revenues. Furthermore, orders included in our revenue backlog may not be profitable. We may experience variances in the realization of our revenue backlog because of project delays or cancellations resulting from external market factors and economic factors beyond our control. As a result, even if we realize all of the revenue from the projects in our revenue backlog, if our expenses associated with these projects are higher than expected, our results of operations and financial condition would be adversely affected.

**Fluctuations in foreign exchange rates may result in short-term currency exchange losses and could adversely affect our revenues from foreign markets and our manufacturing costs in the long term.**

Our international sales are, for the most part, transacted through foreign subsidiaries and generally in the currency of the end-user customers. Consequently, we are exposed to short-term currency exchange risks that may adversely affect our revenues, operating results and cash flows. The majority of our international sales are transacted in euros. To hedge against the dollar/euro exchange exposure of the resulting forecasted payables, receivables and cash balances, we may enter into foreign currency contracts. The success of our hedging programs depends on the accuracy of our forecasts of transaction activity in foreign currency. To the extent that these forecasts are over- or understated during periods of currency volatility, we may experience currency gains or losses. Our hedging activities may only offset a portion of the adverse financial impact resulting from unfavorable movement in dollar/euro exchange rates, which could adversely affect our financial position or results of operations.

Furthermore, the significance to our business of sales in Europe subjects us to risks associated with long-term changes in the dollar/euro exchange rate. A sustained strengthening of the U.S. dollar against the euro would decrease our expected future U.S. dollar revenues from European sales and could have a significant adverse effect on our overall profit margins. During the past few years, economic instability in Europe, including concern over sovereign debt in Greece, Italy, Ireland and certain other European Union countries, caused significant fluctuations in the value of the euro relative to those of other currencies, including the U.S. dollar. Continuing uncertainty regarding economic conditions, including the solvency of these countries and the stability of the Eurozone, could lead to significant long-term economic weakness and reduced economic growth in Europe, the occurrence of which, or the potential occurrence of which, could lead to a sustained strengthening of the U.S. dollar against the euro, adversely affecting the profitability of our European operations.

In addition, we source and manufacture many of our products in China and our costs may increase should the renminbi not remain stable with the U.S. dollar. Although the renminbi is pegged against a basket of currencies determined by the People's Bank of China, the renminbi may appreciate or depreciate significantly in value against the U.S. dollar in the long term. In addition, if China were to permit the renminbi to float to a free market rate of exchange, it is widely anticipated that the renminbi would appreciate significantly in value against U.S. dollar. An increase in the value of the renminbi against the U.S. dollar would have the effect of increasing the labor and production costs of our Chinese manufacturers in U.S. dollar terms, which may result in their passing such costs to us in the form of increased pricing, which would adversely affect our profit margins if we could not pass those price increases along to our customers.

**Economic weakness and uncertainty could adversely affect our revenues, gross margins and expenses.**

Our business is impacted by global economic conditions, which have been in recent years and continue to be volatile. Specifically, our revenues and gross margins depend significantly on global economic conditions and the demand for our products and services in the markets in which we compete. Economic weakness and uncertainty have resulted, and may result in the future, in decreased revenue, gross margin, earnings or growth rates and difficulty managing inventory levels. Sustained uncertainty about global economic conditions may adversely affect demand for our products and services and could cause demand to differ materially from our expectations as customers curtail or delay spending on our products and services. Economic weakness and uncertainty also make it more difficult for us to make accurate forecasts of revenues, gross margins and expenses.

The inability of our customers to obtain credit in the future may impair their ability to make timely payments to us. Tightening of credit by financial institutions could also lead customers to postpone spending or to cancel, decrease or delay their existing or future orders with us. Customer insolvencies could negatively impact our revenues and our ability to collect receivables. Financial difficulties experienced by our suppliers or distributors could result in product delays, increased accounts receivable defaults and inventory challenges. In the event we are impacted by global economic weakness, we may record additional charges relating to restructuring costs or the impairment of assets and our business and results of operations could be materially and adversely affected.

**Risks related to our restatement, accounting review and internal controls**

**Our internal control over financial reporting and our disclosure controls and procedures were not effective as of December 31, 2015. We may not be able to properly remediate existing or future weaknesses or deficiencies in our internal controls, which could adversely affect our ability to produce accurate and timely financial statements, harm our reputation, negatively impact our stock price and damage our business.**

In the second quarter of 2013, we determined that we needed to restate revenue for millions of customer transactions for interim and annual periods ended during the periods from January 1, 2005 to September 30, 2012 (the Restatement Periods) to correct errors in our historically issued financial statements. In addition, certain other adjustments arose in the Restatement Periods that were deemed material and were adjusted in the restated financial statements for the Restatement Periods. The errors in the misapplication of GAAP over revenue recognition and the other errors identified resulted from several control deficiencies that were in existence during the Restatement Periods, some of which remain. As described in Part II, Item 9A, "Controls and Procedures," of this Form 10-K we have not had sufficient time to fully remediate the aforementioned deficiencies and/or there was insufficient passage of time to evidence that the controls that were implemented during 2014 and 2015 were effective. As a result, we concluded that our internal control over financial reporting and our disclosure controls and procedures were not effective as of December 31, 2015.

While we continue with our efforts to remediate the identified weaknesses, we cannot assure you that our remediation efforts will be adequate to allow us to conclude that such controls will become effective during fiscal year 2016. We also cannot assure you that additional material weaknesses in our internal control over financial reporting will not arise or be identified in the future. We intend to continue our control remediation activities and also to continue to improve our operational, information technology, financial systems, and infrastructure, procedures and controls, as well as to continue to expand, train, retain, and manage our personnel who are essential to effective internal control. In doing so, we will continue to incur expenses and expend management time on compliance-related issues.

If we fail to successfully remediate our material weaknesses and implement appropriate controls, we may not be able to prevent or detect a material misstatement in our financial statements on a timely basis or at all. Such misstatements could result in a future restatement of our financial statements, could cause us to fail to meet our reporting obligations, or could cause investors to lose confidence in our reported financial information, leading to a decline in our stock price or litigation. Furthermore, our reputation could be harmed and our customers' and partners' confidence in us may be impaired, all of which could damage our business. For a discussion of the material weaknesses, please see Part II, Item 9A, "Controls and Procedures," of this Form 10-K.

**We cannot assure you that our financial statement preparation and reporting processes are or will be adequate or that future restatements will not be required.**

While we have, following the restatement, significantly changed and enhanced our regular financial statement preparation and reporting processes (as described in our periodic reports filed with the SEC), as of the filing date of this Form 10-K, previously identified material weaknesses in our internal control over financial reporting have not have been fully remediated and we continue to:

- make changes to our finance organization;
- adopt new accounting and reporting processes and procedures;
- enhance our revenue recognition and other existing accounting policies and procedures;
- introduce new or enhanced accounting systems and processes; and
- improve our internal control over financial reporting.

We cannot assure you that the changes and enhancements made to date, or those that are still in process, are adequate, will operate as expected, or will be completed in a timely fashion (if still in process). As a result, we cannot assure you that we will not discover additional errors, that future financial reports will not contain material misstatements or omissions, that future restatements will not be required, that we will be able to timely complete our remaining SEC filings for periods subsequent to this Form 10-K, or that we will be able to stay current with our reporting obligations in the future.

**We may not have sufficient insurance to cover our liability in any current or future litigation claims either due to coverage limits or as a result of insurance carriers seeking to deny coverage of such claims.**

We face a variety of litigation-related liability risks, including potential liability for indemnification of (and advancement of expenses to) current and former directors, officers, and employees under certain circumstances, pursuant to our certificate of incorporation, bylaws, other applicable agreements, and/or Delaware law.

Our insurance coverage under our policies may not be adequate to cover any indemnification or other claims against us. In addition, the underwriters of our present coverage may seek to avoid coverage in certain circumstances based upon the terms of the respective policies, in which case we would have to self-fund any indemnification amounts owed to our directors and officers and bear any other uninsured liabilities.

If we do not have sufficient directors and officers insurance coverage under our present or historical insurance policies, or if our insurance underwriters are successful in avoiding coverage, our results of operations and financial condition could be materially adversely affected.

### **Risks Related to Our Stock**

#### **The market price of our common stock has been and may continue to be volatile.**

The market price of our common stock has historically experienced volatility. Our stock may continue to fluctuate substantially in the future in response to various factors, some of which are beyond our control. These factors include, but are not limited to:

- period-to-period variations in our revenues or operating results;
- our failure to accurately forecast revenues or operating results or to report financial or operating results within the range of our previously issued guidance;
- our ability to produce accurate and timely financial statements;
- whether our results meet analysts' expectations;
- market reaction to significant corporate initiatives or announcements;
- our ability to innovate;
- our relative competitive position within our markets;
- shifts in markets or demand for our solutions;
- changes in our relationships with suppliers, resellers, distributors or customers;
- our commencement of, or involvement in, litigation;
- short sales, hedging or other derivative transactions involving shares of our common stock; and
- shifts in financial markets and fluctuations of exchange rates.

Additionally, broader financial market and global economic trends may affect the market price of our common stock, regardless of our operating performance.

#### **Delaware law and our charter documents may impede or discourage a takeover, which could reduce the market price of our common stock.**

We are a Delaware corporation, and the anti-takeover provisions of Delaware law impose various impediments to the ability of a third party to acquire control of us, even if a change in control would be beneficial to our existing stockholders. In addition, our board of directors or a committee thereof has the power, without stockholder approval, to designate the terms of one or more series of preferred stock and issue shares of preferred stock. The ability of our board of directors or a committee thereof to create and issue a new series of preferred stock, our stockholders rights plan and certain provisions of Delaware law and our certificate of incorporation and bylaws could impede a merger, takeover or other business combination involving us or discourage a potential acquirer from making a tender offer for our common stock, which, under certain circumstances, could reduce the market price of our common stock.

### **Risks related to our 2.00% convertible senior notes due 2020**

**The use of cash to satisfy our conversion obligation under the Notes may adversely affect our liquidity, and we may not have the ability to raise the funds necessary to settle conversions in cash or to repurchase the Notes upon a fundamental change. The agreements governing our other indebtedness may contain limitations on our ability to pay cash upon conversion or repurchase of the Notes.**

On June 15, 2015, we completed an offering of \$125.0 million aggregate principal amount of the Notes. The Notes may be converted into shares of our common stock, at the election of the holder, if certain conditions are met, including, among other things, the last reported sale price of the common stock being greater than or equal to 130% of the conversion price of the notes (initially \$21.94 per share) for at least 20 trading days within a period of 30 consecutive trading days. In the event the conditional conversion feature of the Notes is triggered and one or more holders elect to convert their Notes, we may elect to satisfy our conversion obligation by paying cash or by delivering shares of our common stock. Further, holders of the Notes have the right to require us to repurchase their notes upon the occurrence of a fundamental change, which generally means a merger, sale of all or substantially all of our assets, or other similar change of control transaction. To the extent we do not elect to satisfy our conversion obligation by delivering solely shares of our common stock, we would be required to settle a portion or all of our conversion obligation through the payment of cash. The use of cash to settle our conversion obligation could adversely affect our liquidity. Further, we may not have enough available cash or be able to obtain financing at the time we are required to make repurchases of the Notes surrendered or to make cash payments in respect of Notes being converted. The Financing Agreement contains a restriction on our ability to settle conversions of the Notes with cash.

**The conditional conversion feature of the Notes, if triggered, may adversely affect our operating results.**

Even if holders do not elect to convert their Notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the Notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

**Our failure to repurchase Notes or pay any cash upon conversion of the Notes would constitute a default under the indenture governing the Notes, and could cause defaults under our other or future indebtedness.**

Our failure to repurchase Notes or pay any cash upon conversion of the Notes as required by the indenture governing the Notes would constitute a default under the indenture. This kind of default under the indenture would also constitute a default under the Financing Agreement, and it could constitute a default under agreements governing our future indebtedness. If the repayment of the indebtedness under the Financing Agreement, or any other indebtedness, were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness and repurchase the Notes or make cash payments upon conversions thereof.

**The capped call transaction may affect the trading price of our common stock.**

In connection with the offering of the Notes, we entered into the Capped Call. The primary purpose of the Capped Call was to reduce potential dilution to our common stock and/or offset any cash payments we may be required to make in excess of the principal amount, in each case, upon any conversion of Notes. In order to establish a hedge of the Capped Call, the Counterparty may have entered into various derivative transactions with respect to our common stock, and it may modify its hedge positions from time to time by entering into or unwinding various derivative transactions with respect to our common stock and/or purchasing or selling our common stock or other securities in secondary market transactions prior to the maturity of the Notes. The Counterparty is likely to undertake these activities during, and potentially prior to, any observation period related to a conversion of the Notes. These activities could cause or avoid an increase or a decrease in the market price of our common stock.

**ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

## **ITEM 2. PROPERTIES**

We lease approximately 173,000 square feet in two facilities in Burlington, Massachusetts for our principal corporate and administrative offices, as well as for significant R&D activities. The leases for these facilities expire in May 2020. We also lease 106,000 square feet in Mountain View, California, primarily for R&D, product management and manufacturing activities.

We lease approximately 26,000 square feet of office space in Iver Heath, United Kingdom for our European headquarters, which includes administrative, sales and support functions, and 41,000 square feet in Dublin, Ireland for the final assembly and distribution of our products in Europe. We also lease approximately 8,000 square feet in Singapore for our Asian headquarters.

We also lease office space for sales operations and research and development in several other domestic and international locations.

## **ITEM 3. LEGAL PROCEEDINGS**

### ***Securities Class Action Lawsuits***

In March 2013 and May 2013, two purported securities class action lawsuits were filed against us and certain of our former executive officers seeking unspecified damages in the U.S. District Court for the District of Massachusetts. In July 2013, the two cases were consolidated and the original plaintiffs agreed to act as co-plaintiffs in the consolidated case. In September 2013, the co-plaintiffs filed a consolidated amended complaint on behalf of those who purchased our common stock between October 23, 2008 and March 20, 2013. The consolidated amended complaint, which named us, certain of our current and former executive officers and our former independent accounting firm as defendants, purported to state a claim for violation of federal securities laws as a result of alleged violations of the federal securities laws pursuant to Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder. In October 2013, we filed a motion to dismiss the consolidated amended complaint, resulting in the dismissal of some of the claims, and the dismissal of Mr. Hernandez and one of the two plaintiffs from the case. On December 31, 2014, the parties reached an agreement to settle the case. The agreement called for Avid to cause payment of \$2.5 million in respect of the settlement. The settlement was approved and the case was dismissed on May 12, 2015.

### ***SEC and Department of Justice Inquiry***

In April and May 2013, we received a document preservation request and inquiry from the SEC Division of Enforcement and a federal grand jury subpoena from the Department of Justice requesting certain documents, including in particular documents related to our disclosures regarding our accounting review and revenue transactions. On August 13, 2015, we received a letter from the SEC Division of Enforcement stating that the investigation had been completed and that the Division of Enforcement did not intend to recommend any enforcement action against us by the SEC. On October 20, 2015, we were notified by the Department of Justice that the Department of Justice intends to close its inquiry.

### ***Other Litigation***

Our industry is characterized by the existence of a large number of patents and frequent claims and litigation regarding patent and other intellectual property rights. In addition to the legal proceedings described above, we are involved in legal proceedings from time to time arising from the normal course of business activities, including claims of alleged infringement of intellectual property rights and contractual, commercial, employee relations, product or service performance, or other matters. We do not believe these matters will have a material adverse effect on our financial statements. However, the outcome of legal proceedings and claims brought against us is subject to significant uncertainty. Therefore, our financial position or results of operations may be negatively affected by the unfavorable resolution of one or more of these proceedings for the period in which a matter is resolved. See Part I, Item 1A, "Risk Factors." Our results could be materially adversely affected if we are accused of, or found to be, infringing third parties' intellectual property rights.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not Applicable.

## PART II

### ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Due to the restatement of our September 30, 2012 and prior financial statements, and the delay in filing our periodic reports with the SEC, we were unable to comply with the listing standards of NASDAQ and our common stock was suspended from trading effective February 25, 2014 and formally de-listed effective May 2, 2014. Following the suspension of trading, our common stock traded on the OTC Pink Tier under the symbol AVID. After we completed the restatement and became current in our SEC reporting obligations, our common stock resumed trading on the NASDAQ Global Select Market under the symbol AVID, effective December 8, 2014. The table below shows the high and low sales prices of our common stock for each calendar quarter of the fiscal years ended December 31, 2015 and 2014.

	2015		2014	
	High	Low	High	Low
First Quarter	\$15.74	\$12.66	\$8.29	\$4.93
Second Quarter	\$17.90	\$13.34	\$7.64	\$6.10
Third Quarter	\$13.68	\$7.62	\$10.55	\$7.45
Fourth Quarter	\$9.04	\$6.09	\$14.48	\$9.25

On March 10, 2016, the last reported sale price of our common stock on the NASDAQ Global Select Market was \$6.92 per share. The approximate number of holders of record of our common stock at March 10, 2016 was 301. This number does not include stockholders for whom shares were held in a "nominee" or "street" name.

We have never declared or paid cash dividends on our capital stock, and we do not anticipate paying any cash dividends in the foreseeable future. Our Financing Agreement prohibits us from declaring or paying any dividends in cash on our capital stock.

#### *Stock Performance Graph*

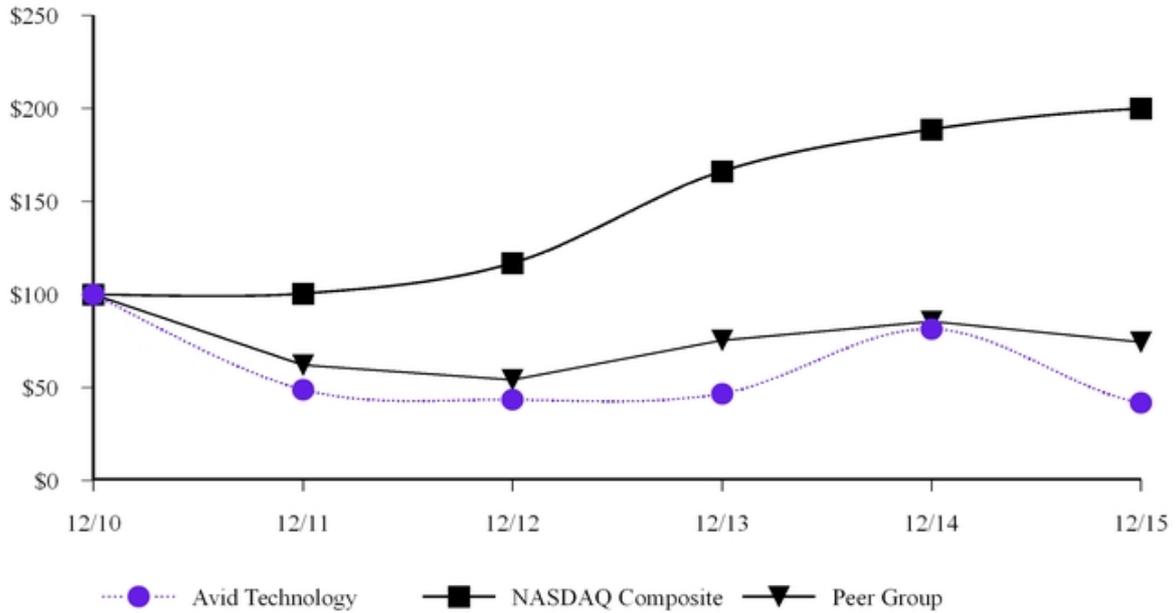
The following graph compares the cumulative stockholder return on our common stock during the period from December 31, 2010 through December 31, 2015 with the cumulative return during the period for:

- the NASDAQ Composite Index (all companies traded on NASDAQ Capital, Global or Global Select Markets),
- the Avid Peer Group Index (see details following the graph).

This comparison assumes the investment of \$100 on December 31, 2010 in our common stock, the NASDAQ Market Index and the Avid Peer Group Index, and assumes that dividends, if any, were reinvested.

## COMPARISON OF FIVE-YEAR CUMULATIVE TOTAL RETURN

Among Avid Technology, Inc., the NASDAQ Composite Index,  
and the Avid Peer Group



Because our products and services are diverse, we do not believe any single published industry index is appropriate for comparing stockholder return. As a result, we compare our common stock returns to a peer group index, which was composed of NASDAQ-traded companies selected by Avid to best represent its peers based on various criteria, including industry classification, number of employees and market capitalization.

The composition of the Avid Peer Group Index is dictated by the peer group selected by the compensation committee of Avid's board of directors for its reference in setting executive compensation. The compensation committee seeks generally to include companies with similar product and service offerings to those of Avid while also achieving a balance of smaller and larger sized peer companies in terms of market capitalizations and revenue.

The Avid Peer Group Index for 2015 was composed of: Black Box Corporation, Cray Inc., Harmonic Inc., Imation Corp., Pegasystems Inc., Progress Software Corporation, QLogic Corporation, Quantum Corporation, RealD Inc., RealNetworks, Inc., Rovi Corporation, Silicon Graphics International Corp., Synaptics, Inc., and Verint Systems Inc.

The Avid Peer Group Index is weighted based on market capitalization.

**ITEM 6. SELECTED FINANCIAL DATA**

The selected condensed consolidated financial data below should be read in conjunction with Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” and Item 8, “Financial Statements and Supplementary Financial Information,” included elsewhere in this Form 10-K. The selected condensed consolidated financial data as of December 31, 2015, 2014, 2013 and 2012 and for the years ended December 31, 2015, 2014, 2013, 2012 and 2011 has been derived from our audited consolidated financial statements. The selected condensed consolidated financial data as of December 31, 2011 has been derived from our unaudited consolidated financial statements, which were prepared on the same basis as our audited financial statements and reflect adjustments to our previously filed consolidated financial statements.

**CONSOLIDATED STATEMENTS OF OPERATIONS DATA:**  
(in thousands, except per share data)

	For the Year Ended December 31,				
	2015	2014	2013	2012	2011
Net revenues (1)	\$ 505,595	\$ 530,251	\$ 563,412	\$ 635,703	\$ 766,885
Cost of revenues	197,445	204,471	223,909	249,008	261,718
Gross profit	308,150	325,780	339,503	386,695	505,167
Operating expenses:					
Research and development	95,898	90,390	95,249	98,879	111,129
Marketing and selling	122,511	133,049	133,890	153,481	163,204
General and administrative	74,109	81,181	77,578	52,066	50,732
Amortization of intangible assets	2,354	1,626	2,648	4,254	8,528
Restructuring costs (recoveries), net	6,305	(165)	5,370	24,838	6,534
Total operating expenses	301,177	306,081	314,735	333,518	340,127
Operating income from continuing operations	6,973	19,699	24,768	53,177	165,040
Other expense, net	(6,408)	(2,783)	(676)	(2,041)	(1,945)
Income from continuing operations before income taxes	565	16,916	24,092	51,136	163,095
(Benefit from) provision for income taxes	(1,915)	2,188	2,939	4,049	635
Income from continuing operations, net of tax	2,480	14,728	21,153	47,087	162,460
Discontinued operations: (2)					
Gain on divestiture of consumer business	—	—	—	37,972	—
Income from divested operations	—	—	—	7,832	63,907
Income from discontinued operations	—	—	—	45,804	63,907
Net income	\$ 2,480	\$ 14,728	\$ 21,153	\$ 92,891	\$ 226,367
Income per share - basic:					
Income per share from continuing operations, net of tax – basic	\$ 0.06	\$ 0.38	\$ 0.54	1.21	4.23
Income per share from discontinued operations – basic	—	—	—	1.18	1.66
Net income per common share – basic	\$ 0.06	\$ 0.38	\$ 0.54	\$ 2.39	\$ 5.89
Income per share - diluted:					
Income per share from continuing operations, net of tax – diluted	\$ 0.06	\$ 0.38	\$ 0.54	1.21	4.22
Income per share from discontinued operations – diluted	—	—	—	1.18	1.65
Net income per common share – diluted	\$ 0.06	\$ 0.38	\$ 0.54	\$ 2.39	\$ 5.87
Weighted-average common shares outstanding – basic	39,423	39,147	39,044	38,804	38,435
Weighted-average common shares outstanding – diluted	40,380	39,267	39,070	38,836	38,534

(1) Our revenues and operating results have been affected by the deferral of revenues from customer transactions occurring prior to 2011. On January 1, 2011, we adopted ASU No. 2009-14. Substantially all revenue arrangements prior to January 1, 2011 were generally recognized on a ratable basis over the service period of Implied Maintenance Release PCS. Subsequent to January 1, 2011, product revenues are generally recognized upon delivery and Implied Maintenance PCS and other service and support elements are recognized as services are rendered. See our policy on “Revenue Recognition” in Note B to our Consolidated Financial Statements in Item 8 of this Form 10-K for a further discussion of the effects of the changes to our revenue recognition policies on our financial results.

(2) On July 2, 2012, we exited our consumer business through a sale of the assets of that business. The disposition of our consumer business qualified for presentation as discontinued operations.

**CONSOLIDATED BALANCE SHEET DATA:**  
(in thousands)

	<b>As of December 31,</b>				
	<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>
Cash, cash equivalents and marketable securities	\$ 17,902	\$ 25,056	\$ 48,203	\$ 70,390	\$ 32,855
Working capital deficit (1)	(167,450)	(157,492)	(133,517)	(96,380)	(228,277)
Total assets	247,926	191,599	235,142	294,361	340,590
Deferred revenues (current and long-term amounts)	348,382	414,840	466,832	558,485	697,124
Long-term liabilities (1)	272,599	222,641	270,594	347,074	346,913
Total stockholders' deficit	(329,572)	(341,070)	(359,335)	(385,592)	(490,874)

(1) The presentation of prior year working capital deficit and long-term liability amounts have been changed to reflect our retrospective adoption of ASU 2015-17, *Balance Sheet Classification of Deferred Taxes*. The standard requires entities to present all deferred tax assets and deferred tax liabilities as non-current in a classified balance sheet.

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### EXECUTIVE OVERVIEW

#### *Our Company*

We provide an open, integrated, and comprehensive technology platform, along with applications and services that enable the creation, distribution, and monetization of audio and video content. Specifically, we develop, market, sell, and support software and hardware for digital media content production, management and distribution. Digital media are video, audio or graphic elements in which the image, sound or picture is recorded and stored as digital values, as opposed to analog or tape-based signals. Our products are used in production and post-production facilities; film studios; network, affiliate, independent and cable television stations; recording studios; live-sound performance venues; advertising agencies; government and educational institutions; corporate communication departments; and by independent video and audio creative professionals, as well as aspiring professionals. Projects produced using our products include feature films, television programming, live events, news broadcasts, commercials, music, video and other digital media content.

Our mission is to create the most powerful and collaborative media network that enables the creation, distribution and monetization of the most inspiring content in the world. Guided by our Avid Everywhere strategic vision, we strive to deliver the industry's most open, innovative and comprehensive media platform connecting content creation with collaboration, asset protection, distribution and consumption for the media in the world – from the most prestigious and award-winning feature films, music recordings, and television shows, to live concerts and news broadcasts. We have been honored over time for our technological innovation with 14 Emmy Awards, one Grammy Award, two Oscars and the first ever America Cinema Editors Technical Excellence Award. Our solutions were used in all 2015 Oscar nominated films for Best Picture, Best Editing, Best Sound Editing and Best Sound Mixing. Our audio solutions were also used in all 2015 Grammy nominated recordings for Best Album of The Year, Best Record of the Year and Best Song of the Year.

Our strategy is built on three pillars, Avid Everywhere, The Avid Advantage and the Avid Customer Association (“ACA”). Avid Everywhere is our strategic vision for connecting creative professionals and media organizations with their audiences in a more powerful, efficient, collaborative, and profitable way. Central to the Avid Everywhere vision is the Avid MediaCentral Platform, an open, extensible, and customizable foundation that streamlines and simplifies workflows by tightly integrating all Avid or third party products and services that run on top of it. The platform provides secure and protected access, which enables the creation and delivery of content faster and easier through a set of modular application suites that together represent an open, integrated, and flexible media production and distribution environment for the media industry. The Avid Advantage complements Avid Everywhere by offering a new standard in service, support and education to enable our customers to derive more efficiency from their Avid investment. Finally, the ACA is an association of dedicated media community visionaries, thought leaders and users designed to provide essential strategic leadership to the media industry, facilitate collaboration between Avid and key industry leaders and visionaries, and deepen relationships between our customers and us.

Another key element of our strategy is our transition to a subscription or recurring revenue based model. In 2014 we began offering subscription based licensing options for some of our products and solutions. These licensing options offer choice in pricing and deployment to suit our customers' needs and are expected to increase recurring revenue on a longer term basis. However, during our transition to a recurring revenue model, we expect that our revenue, deferred revenue, and cash flow from operations will be adversely affected as an increasing portion of our total revenue is recognized ratably rather than up front, and as new product offerings are sold at a wider variety of price points.

As a complement to our core strategy, we continue to review and implement programs throughout the Company to reduce costs, increase operational efficiencies, align talent and enhance our business, including in connection with the restructuring plan announced in February 2016, as described in more detail in Item 1. Business - Recent Events as part of which we are realigning our employee base to better serve our customers' needs. We expect these initiatives will be completed in mid-2017.

## **Financial Summary**

### Revenues

Net revenues were \$505.6 million, \$530.3 million and \$563.4 million, respectively, for 2015, 2014 and 2013. The decreases in revenues were primarily the result of lower amortization of deferred revenues (that is, lower recognition of revenue backlog) attributable to transactions executed on or before December 31, 2010. As described further in “Critical Accounting Policies and Estimates,” our adoption of ASU No. 2009-13, *Multiple-Deliverable Revenue Arrangements, an amendment to ASC Topic 605*, or ASU No. 2009-13, and ASU No. 2009-14, *Certain Revenue Arrangements That Include Software Elements, an amendment to ASC Subtopic 985-605*, resulted in many of our product orders qualifying for upfront revenue recognition; whereas, prior to adoption the same orders required ratable recognition over periods of up to eight years. Revenue backlog associated with transactions executed prior to the adoption of ASU No. 2009-13 and ASU No. 2009-14 will continue to decline through 2016, before the balance is largely amortized, contributing less revenue each period. As a result of this change in accounting standards, even with consistent or increasing aggregate order values, we will experience significant declines in revenues, deferred revenues and revenue backlog in the coming year as revenue backlog associated with transactions occurring prior to January 1, 2011 decreases each year without being replaced by comparable revenue backlog from new transactions. After consideration of this change in accounting standards, there have been no other significant changes in our revenues.

### Gross Margin Percentage

Our gross margin percentage decreased to 60.9% in 2015, compared to 61.4% for 2014. The decrease in gross margin was primarily due to the impact of the previously discussed lower amortization of deferred revenues attributable to transactions executed on or before December 31, 2010, which carry a 100% gross margin, partially offset by the revenue recognized as a result of our conclusion that Implied Maintenance Release PCS on Media Composer 8.0 has ended and improved product mix.

### Operating Expenses

Our total operating expenses for 2015 decreased to \$301.2 million, from \$306.1 million for 2014. This decrease was primarily due to a decrease in restatement-related expense and marketing and selling expense in 2015, partially offset by an increase in our acquisition-related expense and R&D expense.

### Liquidity

At December 31, 2015, our cash balance was \$17.9 million, a decrease of \$7.2 million from December 31, 2014. On February 26, 2016, we entered into a term loan with an aggregate principal amount of \$100 million and up to a maximum of \$5 million in revolving credit (collectively, the “Financing Agreement”). All outstanding loans under the Financing Agreement will become due and payable in February 2021 or in May 2020 if the \$125.0 million in outstanding principal from the 2.00% convertible senior notes due June 15, 2020 have not been repaid or refinanced. The Financing Agreement requires us to comply with a financial statement covenant that stipulates a maximum leverage ratio commencing in June 30, 2016.

Concurrent with entering into the Financing Agreement, we terminated our existing revolving credit agreement, and repaid all outstanding borrowings under the revolving credit agreement. There were no penalties paid by us in connection with the termination of the revolving credit agreement.

## **CRITICAL ACCOUNTING POLICIES AND ESTIMATES**

Our consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosures of contingent assets and liabilities as of the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. We regularly reevaluate our estimates and judgments, including those related to the following: revenue recognition and allowances for sales returns and exchanges; stock-based compensation; income tax assets and liabilities; and restructuring charges and accruals. We base our estimates and judgments on historical experience and various other factors we believe to be reasonable under the circumstances, the results of

which form the basis for judgments about the carrying values of assets and liabilities and the amounts of revenues and expenses that are not readily apparent from other sources. Actual results may differ from these estimates.

We believe the following critical accounting policies most significantly affect the portrayal of our financial condition and involve our most difficult and subjective estimates and judgments.

### ***Revenue Recognition and Allowance for Sales Returns and Exchanges***

#### **General**

We commence revenue recognition when persuasive evidence of an arrangement exists, delivery has occurred, the sales price is fixed or determinable and collection is reasonably assured. Generally, the products we sell do not require significant production, modification or customization. Installation of our products is generally routine, consists of implementation and configuration and does not have to be performed by us.

At the time of a sales transaction, we make an assessment of the collectability of the amount due from the customer. Revenues are recognized only if it is reasonably assured that collection will occur. When making this assessment, we consider customer credit-worthiness and historical payment experience. If it is determined from the outset of the arrangement that collection is not reasonably assured, revenues are recognized on a cash basis, provided that all other revenue recognition criteria are satisfied. At the outset of the arrangement, we also assess whether the fee associated with the order is fixed or determinable and free of contingencies or significant uncertainties. When assessing whether the fee is fixed or determinable, we consider the payment terms of the transaction, our collection experience in similar transactions without making concessions, and our involvement, if any, in third-party financing transactions, among other factors. If the fee is not fixed or determinable, revenues are recognized only as payments become due from the customer, provided that all other revenue recognition criteria are met. If a significant portion of the fee is due after our normal payment terms, we evaluate whether we have sufficient history of successfully collecting past transactions with similar terms without offering concessions. If that collection history is sufficient, revenue recognition commences, upon delivery of the products, assuming all other revenue recognition criteria are satisfied. If we were to make different judgments or assumptions about any of these matters, it could cause a material increase or decrease in the amount of revenues reported in a particular period.

We often receive multiple purchase orders or contracts from a single customer or a group of related customers that are evaluated to determine if they are, in effect, part of a single arrangement. In situations when we have concluded that two or more orders with the same customer are so closely related that they are, in effect, parts of a single arrangement, we account for those orders as a single arrangement for revenue recognition purposes. In other circumstances, when we have concluded that two or more orders with the same customer are independent buying decisions, such as an earlier purchase of a product and a subsequent purchase of a software upgrade or maintenance contract, we account for those orders as separate arrangements for revenue recognition purposes.

For many of our products, there has been an ongoing practice of Avid making available at no charge to customers minor feature and compatibility enhancements as well as bug fixes on a when-and-if-available basis (collectively "Software Updates"), for a period of time after initial sales to end users. The implicit obligation to make such Software Updates available to customers over a period of time represents implied post-contract customer support, which is deemed to be a deliverable in each arrangement and is accounted for as a separate element ("Implied Maintenance Release PCS").

Over the course of the last two years, in connection with a strategic initiative to increase support and other recurring revenue streams, we have taken a number of steps to eliminate the longstanding practice of providing Implied Maintenance Release PCS for the Media Composer, Pro Tools and Sibelius product lines. On Media Composer 8.0 in particular, which was released in May 2014, management has (i) clearly communicated a policy of no longer providing any Software Updates or other support to customers that are not covered under a paid support plan and (ii) implemented robust digital rights management tools to enforce the policy. With the new policy and technology for Media Composer 8.0 in place, combined with management's intent to continue to adhere to the policy, management concluded in the third quarter of 2015 that Implied Maintenance Release PCS for Media Composer 8.0 transactions no longer exists. As a result of the conclusion that Implied Maintenance Release PCS on Media Composer 8.0 has ended, revenue and net income for the twelve months ended December 31, 2015 increased by approximately \$13.0 million, reflecting the recognition of orders received after the launch of Media Composer 8.0 that would have qualified for earlier recognition using the residual method of accounting. In addition, as the elimination of Implied Maintenance Release PCS also resulted in the accelerated recognition of maintenance and product revenues that were previously being recognized over the

expected period of Implied Maintenance Release PCS rather than the contractual maintenance period, the change in the estimated amortization period of transactions being recognized on a ratable basis resulted in an additional \$9.5 million of revenue during the twelve months ended December 31, 2015. Management also concluded in the fourth quarter of 2015 that Implied Maintenance Release PCS on Sibelius 8.0 had ended, which did not have a significant impact on revenue recognition for the twelve months ended December 31, 2015. Management will continue to evaluate the judgment of whether Implied Maintenance Release PCS exists on each product line and version. If and when management concludes Implied Maintenance Release PCS no longer exists for other product lines or versions in future quarters, software revenue related to orders affected will be accelerated and prospective revenue recognition on new product orders will be recognized upfront, assuming all other revenue recognition criteria are met and vendor specific objective evidence (“VSOE”) of fair value exists for all undelivered elements. We believe it is likely that the presumption of Implied Maintenance Release PCS for Pro Tools 12 will be overcome during the year ended December 31, 2016.

We enter into certain contractual arrangements that have multiple elements, one or more of which may be delivered subsequent to the delivery of other elements. These multiple-deliverable arrangements may include products, support, training, professional services and Implied Maintenance Release PCS. For these multiple-element arrangements, we allocate revenue to each deliverable of the arrangement based on the relative selling prices of the deliverables. In such circumstances, we first determine the selling price of each deliverable based on (i) VSOE of fair value if that exists; (ii) third-party evidence of selling price, or TPE, when VSOE does not exist; or (iii) best estimate of the selling price, or BEBP, when neither VSOE nor TPE exists. Revenue is then allocated to the non-software deliverables as a group and to the software deliverables as a group using the relative selling prices of each of the deliverables in the arrangement based on the selling price hierarchy. Our process for determining BEBP for deliverables for which VSOE or TPE does not exist involves significant management judgment. In determining BEBP, we consider a number of data points, including:

- the pricing established by management when setting prices for deliverables that are intended to be sold on a standalone basis;
- contractually stated prices for deliverables that are intended to be sold on a standalone basis;
- the pricing of standalone sales that may not qualify as VSOE of fair value due to limited volumes or variation in prices; and
- other pricing factors, such as the geographical region in which the products are sold and expected discounts based on the customer size and type.

In determining a BEBP for Implied Maintenance Release PCS, which we do not sell separately, we consider (i) the service period for the Implied Maintenance Release PCS, (ii) the differential in value of the Implied Maintenance Release PCS deliverable compared to a full support contract, (iii) the likely list price that would have resulted from our established pricing practices had the deliverable been offered separately, and (iv) the prices a customer would likely be willing to pay.

We estimate the service period of Implied Maintenance Release PCS based on the length of time the product version purchased by the customer is planned to be supported with Software Updates. If facts and circumstances indicate that the original service period of Implied Maintenance Release PCS for a product has changed significantly after original revenue recognition has commenced, we will modify the remaining estimated service period accordingly and recognize the then-remaining deferred revenue balance over the revised service period.

We have established VSOE of fair value for all professional services and training and for some of our support offerings. Our policy for establishing VSOE of fair value consists of evaluating standalone sales, where available, to determine if a substantial portion of the transactions fall within a reasonable range. If a sufficient volume of standalone sales exist and the standalone pricing for a substantial portion of the transactions falls within a reasonable range, management concludes that VSOE of fair value exists.

The following table sets forth our determination of the estimated range of BEBP of Implied Maintenance Release PCS, stated as a percentage of the BEBP of the underlying product being sold, and the estimated range of service periods of Implied Maintenance Release PCS by product group for all periods presented in the consolidated financial statements.

<b>Product Group</b>	<b>BESP of Implied Maintenance Release PCS (as a % of Product BESP)</b>	<b>Estimated Service Period</b>
Professional video creative tools	1% to 13%	18 to 72 months
Video storage and workflow solutions	1% to 2%	72 months
Media management solutions	1% to 3%	12 to 72 months
Digital audio software and workstations solutions	1% to 8%	12 to 36 months
Control surfaces, consoles and live-sound systems	1% to 5%	12 to 96 months
Notation software	4% to 8%	12 to 46 months

In accordance with ASU No. 2009-14, we exclude from the scope of software revenue recognition requirements our sales of tangible products that contain both software and non-software components that function together to deliver the essential functionality of the tangible products. We adopted ASU No. 2009-13 and ASU No. 2009-14 prospectively on January 1, 2011 for new and materially modified arrangements originating after December 31, 2010.

Prior to our adoption of ASU No. 2009-14, we primarily recognized revenues using the revenue recognition criteria of Accounting Standards Codification, or ASC, Subtopic 985-605, *Software-Revenue Recognition*. As a result of our adoption of ASU No. 2009-14 on January 1, 2011, a majority of our products are now considered non-software elements under GAAP, which excludes them from the scope of ASC Subtopic 985-605 and includes them within the scope of ASC Topic 605, *Revenue Recognition*. Because we had not been able to establish VSOE of fair value for Implied Maintenance Release PCS, as described further below, substantially all revenue arrangements prior to January 1, 2011 were recognized on a ratable basis over the service period of Implied Maintenance Release PCS. Subsequent to January 1, 2011 and the adoption of ASU No. 2009-14, we determine a relative selling price for all elements of the arrangement through the use of BESP, as VSOE and TPE are typically not available, resulting in revenue recognition upon delivery of arrangement consideration attributable to product revenue, provided all other criteria for revenue recognition are met, and revenue recognition of Implied Maintenance Release PCS and other service and support elements over time as services are rendered.

The timing of revenue recognition of customer arrangements follows a number of different accounting models determined by the characteristics of the arrangement, and that timing can vary significantly from the timing of related cash payments due from customers. One significant factor affecting the timing of revenue recognition is the determination of whether each deliverable in the arrangement is considered to be a software deliverable or a non-software deliverable. For transactions occurring after January 1, 2011, our revenue recognition policies have generally resulted in the recognition of approximately 70% of billings as revenue in the year of billing, and prior to January 1, 2011, the previously applied revenue recognition policies resulted in the recognition of approximately 30% of billings as revenue in the year of billing. We expect this trend to continue in future periods.

#### Revenue Recognition of Non-Software Deliverables

Revenue from products that are considered non-software deliverables is recognized upon delivery of the product to the customer. Products are considered delivered to the customer once they have been shipped and title and risk of loss has been transferred. For most of our product sales, these criteria are met at the time the product is shipped. Revenue from support that is considered a non-software deliverable is initially deferred and is recognized ratably over the contractual period of the arrangement, which is generally twelve months. Professional services and training services are typically sold to customers on a time and materials basis. Revenue from professional services and training services that are considered non-software deliverables is recognized for these deliverables as services are provided to the customer. Revenue for Implied Maintenance Release PCS that is considered a non-software deliverable is recognized ratably over the service period of Implied Maintenance Release PCS, which ranges from 1 to 8 years.

#### Revenue Recognition of Software Deliverables

We recognize the following types of elements sold using software revenue recognition guidance: (i) software products and software upgrades, when the software sold in a customer arrangement is more than incidental to the arrangement as a whole and the product does not contain hardware that functions with the software to provide essential functionality, (ii) initial support contracts where the underlying product being supported is considered to be a software deliverable, (iii) support contract renewals,

and (iv) professional services and training that relate to deliverables considered to be software deliverables. Because we do not have VSOE of the fair value of our software products, we are permitted to account for our typical customer arrangements that include multiple elements using the residual method. Under the residual method, the VSOE of fair value of the undelivered elements (which could include support, professional services or training, or any combination thereof) is deferred and the remaining portion of the total arrangement fee is recognized as revenue for the delivered elements. If evidence of the VSOE of fair value of one or more undelivered elements does not exist, revenues are deferred and recognized when delivery of those elements occurs or when VSOE of fair value can be established. VSOE of fair value is typically based on the price charged when the element is sold separately to customers. We are unable to use the residual method to recognize revenues for most arrangements that include products that are software deliverables under GAAP since VSOE of fair value does not exist for Implied Maintenance Release PCS elements, which are included in many of our arrangements.

For software products that include Implied Maintenance Release PCS, an element for which VSOE of fair value does not exist, revenue for the entire arrangement fee, which could include combinations of product, professional services, training and support, is recognized ratably as a group over the longest service period of any deliverable in the arrangement, with recognition commencing on the date delivery has occurred for all deliverables in the arrangement (or begins to occur in the case of professional services, training and support). Standalone sales of support contracts are recognized ratably over the service period of the product being supported.

From time to time, we offer certain customers free upgrades or specified future products or enhancements. When a software deliverable arrangement contains an Implied Maintenance Release PCS deliverable, revenue recognition of the entire arrangement will only commence when any free upgrades or specified future products or enhancements have been delivered, assuming all other products in the arrangement have been delivered and all services, if any, have commenced.

#### Other Revenue Recognition Policies

In a limited number of arrangements, the professional services and training to be delivered are considered essential to the functionality of our software products. If services sold in an arrangement are deemed to be essential to the functionality of the software products, the arrangement is accounted for using contract accounting. As we have concluded that we cannot reliably estimate our contract costs, we use the completed contract method of contract accounting. The completed contract method of accounting defers all revenue and costs until the date that the products have been delivered and professional services, exclusive of post-contract customer support, have been completed. Deferred costs related to fully deferred contracts are recorded as a component of inventories in the consolidated balance sheet, and generally all other costs of sales are recognized when revenue recognition commences.

We record a provision for estimated returns and other allowances as a reduction of revenues in the same period that related revenues are recorded. Use of management estimates is required in connection with establishing and maintaining a sales allowance for expected returns and other credits, including rebates and returns. In making these estimates, we analyze historical returns and credits and other relevant factors. While we believe we can make reliable estimates regarding these matters, these estimates are inherently subjective. The amount and timing of our revenues for any period may be affected if actual product returns prove to be materially different from our estimates.

We record as revenues all amounts billed to customers for shipping and handling costs and record the actual shipping costs as a component of cost of revenues. Reimbursements received from customers for out-of-pocket expenses are recorded as revenues, with related costs recorded as cost of revenues. We present revenues net of any taxes collected from customers and remitted to government authorities.

In the consolidated statements of operations, we classify revenues as product revenues or services revenues. For multiple element arrangements that include both product and service elements, including Implied Maintenance Release PCS, we evaluate available indicators of fair value and apply our judgment to reasonably classify the arrangement fee between product revenues and services revenues. The amount of multiple element arrangement fees classified as product and services revenues based on management estimates of fair value when VSOE of fair value for all elements of an arrangement does not exist could differ from amounts classified as product and service revenues if VSOE of fair value for all elements existed.

## ***Stock-Based Compensation***

We account for stock-based compensation at fair value. The vesting of stock options and restricted stock awards may be based on time, performance, market conditions, or a combination of performance and market conditions. In the future, we may grant stock awards, options, or other equity-based instruments allowed by our stock-based compensation plans, or a combination thereof, as part of our overall compensation strategy.

We generally use the Black-Scholes option pricing model to estimate the fair value of stock option grants with time-based vesting. The Black-Scholes option pricing model relies on a number of key assumptions to calculate estimated fair values. Our assumed dividend yield of zero is based on the fact that we have never paid cash dividends, we have no present intention to pay cash dividends and our current credit agreement precludes us from paying dividends. Our expected stock-price volatility assumption is based on recent (six-month trailing) implied volatility of the traded options. These calculations are performed on exchange-traded options of our common stock based on the implied volatility of long-term (9- to 39-month term) exchange-traded options. During 2014 we changed the method of calculating the expected volatility. The expected volatility is now based on actual historic stock volatility for periods equivalent to the expected term of the award. The assumed risk-free interest rate is the U.S. Treasury security rate with a term equal to the expected life of the option. The assumed expected life is based on company-specific historical experience, considering the exercise behavior of past grants and models the pattern of aggregate exercises. The fair values of restricted stock and restricted stock unit awards with time-based vesting are based on the intrinsic values of the awards at the date of grant as these awards have a purchase price of \$0.01 per share.

We have also issued stock option grants or restricted stock unit awards with vesting based on market conditions, which historically included Avid's stock price or performance conditions, generally our adjusted EBITDA. The fair values and derived service periods for all grants that include vesting based on market conditions are estimated using the Monte Carlo simulation method. For stock option grants that include vesting based on performance conditions, the fair values are estimated using the Black-Scholes option pricing model. For restricted stock unit awards that include vesting based on performance conditions, the fair values are estimated based on the intrinsic values of the awards at the date of grant as these awards have a purchase price of \$0.01 per share.

## ***Income Tax Assets and Liabilities***

We record deferred tax assets and liabilities based on the net tax effects of tax credits, operating loss carryforwards and temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes compared to the amounts used for income tax purposes. We regularly review our deferred tax assets for recoverability with consideration for such factors as historical losses, projected future taxable income and the expected timing of the reversals of existing temporary differences. A valuation allowance is recorded when it is more likely than not that some portion or all of the deferred tax assets will not be realized. Based on the magnitude of our gross deferred tax assets, which totaled approximately \$425 million at December 31, 2015, and our level of historical U.S. losses, we have determined that the uncertainty regarding the realization of these assets is sufficient to warrant the need for a full valuation allowance against our U.S. deferred tax assets. We also determined that a valuation allowance is warranted on a portion of our foreign deferred tax assets.

Our assessment of the valuation allowance on our U.S. and foreign deferred tax assets could change in the future based on our levels of pre-tax income and other tax-related adjustments. Reversal of the valuation allowance in whole or in part would result in a non-cash reduction in income tax expense during the period of reversal. To the extent some or all of our valuation allowance is reversed, future financial statements would reflect an increase in non-cash income tax expense until such time as our deferred tax assets are fully utilized.

The amount of income taxes we pay is subject to our interpretation of applicable tax laws in the jurisdictions in which we file. We have taken and will continue to take tax positions based on our interpretation of such tax laws. There can be no assurance that a taxing authority will not have a different interpretation of applicable law and assess us with additional taxes. Should we be assessed with additional taxes, it could have a negative impact on our results of operations or financial condition.

We account for uncertainty in income taxes recognized in our financial statements by applying a two-step process to determine the amount of tax benefit to be recognized. First, the tax position must be evaluated to determine the likelihood that it will be sustained upon examination by the taxing authorities, based on the technical merits of the position. If the tax position is deemed more likely than not to be sustained, the tax position is then assessed to determine the amount of benefit to recognize in the

financial statements. The amount of the benefit that may be recognized is the largest amount that has a greater than 50% likelihood of being realized upon ultimate settlement. Our provision for income taxes includes the effects of any resulting tax reserves, referred to as unrecognized tax benefits, that are considered appropriate as well as the related net interest and penalties. At December 31, 2015 and 2014, the amounts recorded for unrecognized tax benefits in our consolidated balance sheets totaled \$26.0 million and \$25.8 million, respectively, including interest and penalties. If these benefits had been recognized, a reduction of our income tax provision of \$3.2 million and \$0.8 million would have resulted at December 31, 2015 and 2014.

### ***Restructuring Charges and Accruals***

We recognize facility-related restructuring charges upon exiting all or a portion of a leased facility and meeting cease-use and other requirements. The amount of restructuring charges is based on the fair value of the lease obligation for the abandoned space, which includes a sublease assumption that could be reasonably obtained.

Based on our policies for the calculation and payment of severance benefits, we account for employee-related restructuring charges as an ongoing benefit arrangement in accordance with ASC Topic 712, *Compensation - Nonretirement Postemployment Benefits*. Severance-related charges are accrued when it is determined that a liability has been incurred, which is when the expected severance payments are probable and can be reasonably estimated.

Restructuring charges require significant estimates and assumptions, including sub-lease income and severance period assumptions. Our estimates involve a number of risks and uncertainties, some of which are beyond our control, including future real estate market conditions and our ability to successfully enter into subleases or termination agreements with terms as favorable as those assumed when arriving at our estimates. We monitor these estimates and assumptions on at least a quarterly basis for changes in circumstances and any corresponding adjustments to the accrual are recorded in our statement of operations in the period when such changes are known.

## RESULTS OF OPERATIONS

The following table sets forth certain items from our consolidated statements of operations as a percentage of net revenues for the periods indicated:

	Year Ended December 31,		
	2015	2014	2013
<b>Net revenues:</b>			
Product revenues	66.5 %	71.4 %	70.2 %
Services revenues	33.5 %	28.6 %	29.8 %
Total net revenues	100.0 %	100.0 %	100.0 %
Cost of revenues	39.1 %	38.6 %	39.7 %
Gross margin	60.9 %	61.4 %	60.3 %
<b>Operating expenses:</b>			
Research and development	19.0 %	17.0 %	16.9 %
Marketing and selling	24.2 %	25.1 %	23.8 %
General and administrative	14.7 %	15.3 %	13.8 %
Amortization of intangible assets	0.5 %	0.3 %	0.5 %
Restructuring costs, net	1.2 %	— %	1.0 %
Total operating expenses	59.6 %	57.7 %	55.9 %
Operating income	1.3 %	3.7 %	4.4 %
Interest and other income (expense), net	(1.2)%	(0.5)%	(0.1)%
Income before income taxes	0.1 %	3.2 %	4.3 %
(Benefit) provision for income taxes	(0.4)%	0.4 %	0.5 %
Net income	0.5 %	2.8 %	3.8 %

### Net Revenues

Our net revenues are derived mainly from sales of video and audio hardware and software products and solutions for digital media content creation, distribution and monetization, and related professional services and maintenance contracts. We commonly sell large, complex solutions to our customers that, due to their strategic nature, have long lead times where the timing of order execution and fulfillment can be difficult to predict. As a result, the timing and amount of product revenue recognized each quarter related to these large orders, as well as the services associated with them, can fluctuate significantly from quarter to quarter and cause quarterly and annual operating results to vary.

### Net Revenues for the Years Ended December 31, 2015 and 2014

	(dollars in thousands)			
	2015	Change		2014
	Net Revenues	\$	%	Net Revenues
Video products and solutions	\$ 201,559	\$ (31,905)	(13.7)%	\$ 233,464
Audio products and solutions	134,812	(10,351)	(7.1)%	145,163
Total products and solutions	336,371	(42,256)	(11.2)%	378,627
Services	169,224	17,600	11.6%	151,624
Total net revenues	\$ 505,595	\$ (24,656)	(4.6)%	\$ 530,251

**Net Revenues for the Years Ended December 31, 2014 and 2013**

(dollars in thousands)

	2014	Change		2013
	Net Revenues	\$	%	Net Revenues
Video products and solutions	\$ 233,464	\$ (9,709)	(4.0)%	\$ 243,173
Audio products and solutions	145,163	(7,195)	(4.7)%	152,358
Total products and solutions	378,627	(16,904)	(4.3)%	395,531
Services	151,624	(16,257)	(9.7)%	167,881
Total net revenues	\$ 530,251	\$ (33,161)	(5.9)%	\$ 563,412

The following table sets forth the percentage of our net revenues attributable to geographic regions for the periods indicated:

	Year Ended December 31,		
	2015	2014	2013
United States	37%	36%	39%
Other Americas	7%	9%	7%
Europe, Middle East and Africa	41%	41%	38%
Asia-Pacific	15%	14%	16%

Video Products and Solutions Revenues

*2015 Compared to 2014*

Video products and solutions revenues decreased \$31.9 million, or 13.7%, for 2015, compared to 2014. The decrease in video revenues was primarily due to lower amortization of deferred revenues attributable to transactions executed on or before December 31, 2010. As a result of our adoption of ASU No. 2009-13 and ASU No. 2009-14 on January 1, 2011, many of our product orders now qualify for upfront revenue recognition; however, prior to adoption of this accounting guidance the same orders required ratable recognition over periods of up to eight years. Deferred revenue associated with transactions executed prior to the adoption of ASU No. 2009-13 and ASU No. 2009-14 will continue to decline through 2016, before the balance is largely amortized, contributing less revenue each period. Revenues for the twelve months ended December 31, 2014 were also higher due to increased demand attributable to the 2014 Winter Olympics and 2014 FIFA World Cup events. Declines in video products and solutions revenue in 2015 were partially offset by the impact of additional revenue attributed to the sale of Orad products after completion of the acquisition on June 23, 2015.

*2014 Compared to 2013*

Video products and solutions revenues decreased \$9.7 million, or 4.0%, for 2014, compared to 2013. The decrease in video revenues was primarily impacted by the previously discussed lower amortization of deferred revenues attributable to transactions executed on or before December 31, 2010.

Audio Products and Solutions Revenues

*2015 Compared to 2014*

Audio products and solutions revenues decreased \$10.4 million, or 7.1%, for 2015, compared to 2014. The decrease in audio revenues was primarily the result of the previously discussed lower amortization of deferred revenues attributable to transactions executed on or before December 31, 2010. Also contributing to the decrease in audio revenues for the year ended December 31, 2015 were delays in the development of certain features related to Pro Tools 12 software, which reduced revenue recognition and, along with price points that were inconsistent with market dynamics, negatively impacted new product bookings.

## *2014 Compared to 2013*

Audio products and solutions revenues decreased \$7.2 million, or 4.7%, for 2014, compared to 2013. The decrease in audio revenues was primarily the result of the previously discussed lower amortization of deferred revenues attributable to transactions executed on or before December 31, 2010.

## Services Revenues

### *2015 Compared to 2014*

Services revenues are derived primarily from maintenance contracts, as well as professional services and training. The \$17.6 million, or 11.6%, increase in services revenues for 2015, compared to 2014, was primarily the result of the determination that Implied Maintenance Release PCS on Media Composer 8.0 no longer exists, resulting in accelerated recognition of maintenance revenues that were previously being recognized over the expected period of Implied Maintenance Release PCS rather than the contractual maintenance period. The increased revenues in 2015 reflected the recognition of orders received after the release of Media Composer 8.0 that would have qualified for earlier recognition under GAAP.

### *2014 Compared to 2013*

The \$16.3 million, or 9.7%, decrease in services revenues for 2014, compared to 2013, was primarily the result of the previously discussed lower amortization of deferred revenues attributable to transactions executed on or before December 31, 2010.

## Revenue Backlog

At December 31, 2015, we had revenue backlog of approximately \$552 million, compared to \$540 million at December 31, 2014. Revenue backlog, as we define it, consists of firm orders received and includes both (i) orders where the customer has paid in advance of our performance obligations being fulfilled, which are reflected as deferred revenues in our balance sheet and (ii) orders for future product deliveries or services that have not yet been invoiced by us. Revenue backlog associated with arrangement consideration paid in advance primarily consists of deferred revenue related to (i) the undelivered portion of annual support contracts, (ii) software arrangements for which VSOE of fair value of undelivered elements does not exist, (iii) Implied Maintenance Release PCS performance obligations, and (iv) in-process installations that are subject to substantive customer acceptance provisions. Revenue backlog associated with orders for future product deliveries and services where cash has not been received primarily consists of (i) product orders received but not yet shipped, (ii) professional services not yet rendered and (iii) future years of multi-year support agreements not yet billed.

A meaningful, albeit rapidly declining portion of our revenue backlog is attributable to deferred revenue related to transactions that occurred prior to our January 1, 2011 adoption of the accounting guidance related to multiple-element arrangements (ASU No. 2009-13) and the accounting guidance related to differentiating software and hardware in a combined product offering (ASU No. 2009-14). Prior to our adoption of ASU No. 2009-14, the majority of our products were subject to software revenue recognition guidance that required us to recognize revenue ratably for periods as long as eight years from product delivery because we did not have VSOE of fair value for the Implied Maintenance Release PCS deliverable included in most of our customer arrangements. Upon adoption of ASU No. 2009-14, most of our products are now excluded from the scope of software revenue recognition, resulting in recognition of arrangement consideration upon product shipments (based on management's best estimate of selling price) with only the arrangement consideration attributable to Implied Maintenance Release PCS being recognized ratably over an extended period of time. As a result of the change in accounting standards, even with consistent or increasing aggregate order values, we will experience significant declines in revenues, deferred revenues and revenue backlog in the coming year as revenue backlog associated with transactions occurring prior to January 1, 2011 decreases each quarter without being replaced by comparable revenue backlog from new transactions.

The expected timing of recognition of revenue backlog as revenue in the future is as follows as of December 31, 2015 (in thousands):

	For the Year Ending December 31,						Total
	2016	2017	2018	2019	2020	Thereafter	
Orders executed prior to January 1, 2011	\$ 24,772	\$ 952	\$ 144	\$ —	\$ —	\$ —	\$ 25,868
Orders executed or materially modified on or after January 1, 2011	244,112	117,458	68,011	35,292	21,407	39,938	526,218
	<u>\$ 268,884</u>	<u>\$ 118,410</u>	<u>\$ 68,155</u>	<u>\$ 35,292</u>	<u>\$ 21,407</u>	<u>\$ 39,938</u>	<u>\$ 552,086</u>

Orders included in revenue backlog may be reduced, canceled or deferred by our customers. The expected timing of the recognition of revenue backlog as revenue is based on our current estimates and could change based on a number of factors, including (i) the timing of delivery of products and services, (ii) customer cancellations or change orders, or (iii) changes in the estimated period of time Implied Maintenance Release PCS is provided to customers. As there is no industry standard definition of revenue backlog, our reported revenue backlog may not be comparable with other companies. Revenue backlog as of any particular date should not be relied upon as indicative of our net revenues for any future period.

### Cost of Revenues, Gross Profit and Gross Margin Percentage

Cost of revenues consists primarily of costs associated with:

- procurement of components and finished goods;
- assembly, testing and distribution of finished products;
- warehousing;
- customer support related to maintenance;
- royalties for third-party software and hardware included in our products;
- amortization of technology; and
- providing professional services and training.

Amortization of technology included in cost of revenues represents the amortization of developed technology assets acquired as part of acquisitions and is described further in the Amortization of Intangible Assets section below.

### Costs of Revenues for the Years Ended December 31, 2015 and 2014

	(dollars in thousands)			
	2015	Change		2014
	Costs	\$	%	Costs
Products	\$ 131,881	\$ (11,884)	(8.3)%	\$ 143,765
Services	61,501	845	1.4%	60,656
Amortization of intangible assets	4,063	4,013	8,026.0%	50
Total cost of revenues	<u>197,445</u>	<u>(7,026)</u>	<u>(3.4)%</u>	<u>204,471</u>
Gross profit	\$ 308,150	\$ (17,630)	(5.4)%	\$ 325,780

**Costs of Revenues for the Years Ended December 31, 2014 and 2013**

	(dollars in thousands)			
	2014	Change		2013
	Costs	\$	%	Costs
Products	\$ 143,765	\$ (15,499)	(9.7)%	\$ 159,264
Services	60,656	(2,521)	(4.0)%	63,177
Amortization of intangible assets	50	(1,418)	(96.6)%	1,468
Total costs of revenues	<u>204,471</u>	<u>(19,438)</u>	<u>(8.7)%</u>	<u>223,909</u>
Gross profit	\$ 325,780	\$ (13,723)	(4.0)%	\$ 339,503

Gross Margin Percentage

Gross margin percentage, which is net revenues less costs of revenues divided by net revenues, fluctuates based on factors such as the mix of products sold, the cost and proportion of third-party hardware and software included in the systems sold, the offering of product upgrades, price discounts and other sales-promotion programs, the distribution channels through which products are sold, the timing of new product introductions, sales of aftermarket hardware products such as disk drives and currency exchange-rate fluctuations. Our total gross margin percentage for 2015 decreased slightly to 60.9%, from 61.4% for 2014. The decrease in gross margin was primarily due to the previously discussed lower amortization of deferred revenues attributable to transactions executed on or before December 31, 2010, partially offset by the revenue recognized from the ended Implied Maintenance Release PCS on Media Composer 8.0 and improved product mix. As previously discussed, the revenues recognized from the amortization of deferred revenues (that is, the recognition of revenue backlog) attributable to transactions executed on or before December 31, 2010 will continue to decline until the related deferred revenue balance are largely amortized by 2016. These revenues have 100% margins, because the timing of the recognition of the deferred costs did not change as a result of our restatement, and our gross margin percentages will be negatively impacted as these revenues decline.

**Gross Margin % for the Years Ended December 31, 2015, 2014 and 2013**

	2015 Gross Margin %	(Decrease) Increase in Gross Margin %	2014 Gross Margin %	Increase (Decrease) in Gross Margin %	2013 Gross Margin %
Products	60.8%	(1.2)%	62.0%	2.3%	59.7%
Services	63.7%	3.7%	60.0%	(2.4)%	62.4%
Total Gross Margin	60.9%	(0.5)%	61.4%	1.1%	60.3%

*2015 Compared to 2014*

The decrease in products gross margin percentage for 2015, compared to 2014, was primarily due to the previously discussed lower amortization of deferred revenues attributable to transactions executed on or before December 31, 2010.

The increase in services gross margin percentage for 2015, compared to 2014, was attributable to the revenue recognized as a result of the conclusion that Implied Maintenance Release PCS on Media Composer 8.0 has ended and improved product mix.

*2014 Compared to 2013*

The increase in products gross margin percentage for 2014, compared to 2013, was driven by the cost reduction initiatives, partially offset by the impact of the previously discussed lower amortization of deferred revenues attributable to transactions executed on or before December 31, 2010.

The decrease in services gross margin percentage for 2014, compared to 2013, was due to lower services revenues on relatively fixed costs. As previously discussed, the revenues recognized from the amortization of deferred revenues (that is, the recognition of revenue backlog) attributable to transactions executed on or before December 31, 2010 will continue to decline until the related deferred revenue balance are largely amortized by 2016. These revenues have 100% margins, because the timing of the

recognition of the deferred costs did not change as a result of our restatement, and our gross margin percentages will be negatively impacted as these revenues decline.

### *Operating Expenses and Operating Income*

#### Operating Expenses and Operating Income for the Years Ended December 31, 2015 and 2014

	(dollars in thousands)			
	2015 Expenses	Change		2014 Expenses
		\$	%	
Research and development expenses	\$ 95,898	\$ 5,508	6.1%	\$ 90,390
Marketing and selling expenses	122,511	(10,538)	(7.9)%	133,049
General and administrative expenses	74,109	(7,072)	(8.7)%	81,181
Amortization of intangible assets	2,354	728	44.8%	1,626
Restructuring (recoveries) costs, net	6,305	6,470	(3,921.2)%	(165)
Total operating expenses	<u>\$ 301,177</u>	<u>\$ (4,904)</u>	<u>(1.6)%</u>	<u>\$ 306,081</u>
Operating income	\$ 6,973	\$ (12,726)	(64.6)%	\$ 19,699

#### Operating Expenses and Operating Income for the Years Ended December 31, 2014 and 2013

	(dollars in thousands)			
	2014 Expenses	Change		2013 Expenses
		\$	%	
Research and development expenses	\$ 90,390	\$ (4,859)	(5.1)%	\$ 95,249
Marketing and selling expenses	133,049	(841)	(0.6)%	133,890
General and administrative expenses	81,181	3,603	4.6%	77,578
Amortization of intangible assets	1,626	(1,022)	(38.6)%	2,648
Restructuring costs, net	(165)	(5,535)	(103.1)%	5,370
Total operating expenses	<u>\$ 306,081</u>	<u>\$ (8,654)</u>	<u>(2.7)%</u>	<u>\$ 314,735</u>
Operating income	\$ 19,699	\$ (5,069)	(20.5)%	\$ 24,768

### *Research and Development Expenses*

Research and development, or R&D, expenses include costs associated with the development of new products and the enhancement of existing products, and consist primarily of employee salaries and benefits; facilities costs; depreciation; costs for consulting and temporary employees; and prototype and other development expenses. R&D expenses increased \$5.5 million, or 6.1%, during the year ended December 31, 2015, compared to 2014. The table below provides further details regarding the changes in components of R&D expense.

**Year-Over-Year Change in Research and Development Expenses for the Years Ended December 31, 2015 and 2014**

(dollars in thousands)

	2015 Increase/(Decrease) From 2014		2014 Increase/(Decrease) From 2013	
	\$	%	\$	%
	Consulting and outside services	\$ 3,209	21.2%	\$ 973
Facilities and information technology	1,214	7.8%	(2,050)	(11.6)%
Computer hardware and supplies	718	14.9%	1,467	43.8%
Personnel-related	598	1.1%	(5,150)	(8.9)%
Other expenses	(231)	(9.7)%	(99)	(4.0)%
Total research and development expenses (decrease)/increase	<u>\$ 5,508</u>	<u>6.1%</u>	<u>\$ (4,859)</u>	<u>(5.1)%</u>

*2015 Compared to 2014*

The increases in consulting and outside services and computer hardware and supplies expenses for 2015, compared to 2014, were primarily the result of the timing of certain development projects in 2015, compared to 2014, as we develop new products and solutions consistent with our Avid Everywhere strategic vision. The increase in personnel-related expenses for 2015, compared to 2014, was due to Orad R&D personnel-related expenses, partially offset by decreased incentive-based compensation accrual and stock-based compensation costs. The increase in facilities and information technology expenses for 2015, compared 2014, was a result of R&D headcount increase and higher usage.

*2014 Compared to 2013*

The decreases in personnel-related expenses and facilities and information technology infrastructure costs for 2014, compared to 2013, reflect lower employee headcount which resulted in lower usage of facilities and information technology overhead. The increases in computer hardware and supplies expenses and consulting and outside services expenses were primarily the result of the timing of certain development projects in 2014, compared to 2013, as we develop new products and solutions consistent with our Avid Everywhere strategic vision.

Marketing and Selling Expenses

Marketing and selling expenses consist primarily of employee salaries and benefits for selling, marketing and pre-sales customer support personnel; commissions; travel expenses; advertising and promotional expenses; web design costs and facilities costs. Marketing and selling expenses decreased \$10.5 million, or 7.9%, during the year ended December 31, 2015, compared to 2014. The table below provides further details regarding the changes in components of marketing and selling expense.

**Year-Over-Year Change in Marketing and Selling Expenses for Years Ended December 31, 2015 and 2014**

(dollars in thousands)

	2015 Decrease From 2014		2014 Decrease From 2013	
	\$	%	\$	%
	Facilities and information technology infrastructure	\$ (4,607)	(14.4)%	\$ (342)
Personnel-related	(3,461)	(4.5)%	1,536	2.1%
Foreign exchange losses (gains)	(2,137)	(235.3)%	721	385.4%
Consulting and outside services	(1,278)	(6.5)%	1,478	8.2%
Product introduction	—	—%	(3,666)	100.2%
Web advertising	755	4,541.4%	—	—%
Other expenses	190	4.4%	(568)	(11.0)%
Total marketing and selling expenses decrease	<u>\$ (10,538)</u>	<u>(7.9)%</u>	<u>\$ (841)</u>	<u>(0.6)%</u>

## 2015 Compared to 2014

The decrease in facilities and information technology infrastructure expenses for 2015, compared to 2014, was primarily the result of less usage of facilities and information technology in 2015. The decrease in personnel-related expenses for 2015, compared to 2014, was primarily due to decreased incentive-based compensation accrual, commission expenses and stock-based compensation costs. The decrease in consulting and outside services expenses was primarily due to our cost reduction initiatives. The web advertising expenses were related to our large advertising campaigns in 2015, which was not present at the same level during 2014. The net foreign exchange gains (specifically, resulting from foreign currency forward contracts, foreign currency denominated transactions, and the revaluation of foreign currency denominated assets and liabilities), which are included in marketing and selling expenses, were \$1.3 million for 2015, compared to losses of \$(0.9) million in 2014. We classify these gains and losses within marketing and selling expenses because the gains and losses generally arise from revenue arrangements that are denominated in foreign currencies to facilitate sales in certain foreign jurisdictions.

## 2014 Compared to 2013

The decrease in product introduction expenses in 2014 was the result of significant new product introductions during 2013, which was not present at the same level in 2014. The increase in consulting and outside services expenses for 2014, compared to 2013, was primarily the result of costs related to our Avid Customer Association, or ACA, which was launched in September 2013, and the inaugural ACA events, Avid Connect and Avid Connect Europe, which took place in April 2014 and September 2014, respectively. The increase in personnel-related expenses for 2014, compared to 2013, was primarily due to increased incentive-based compensation accrual, commission expenses and stock-based compensation costs. The net foreign exchange losses were \$0.9 million for 2014, compared to losses of \$0.2 million in the 2013 period.

## General and Administrative Expenses

General and administrative expenses consist primarily of employee salaries and benefits for administrative, executive, finance and legal personnel; audit, legal and strategic consulting fees; and insurance, information systems and facilities costs. Information systems and facilities costs reported within general and administrative expenses are net of allocations to other expenses categories. General and administrative expenses decreased \$7.1 million, or 8.7%, during the year ended December 31, 2015, compared to 2014. The table below provides further details regarding the changes in components of general and administrative expense.

**Year-Over-Year Change in General and Administrative Expenses for the Years Ended December 31, 2015 and 2014**

	(dollars in thousands)			
	2015 (Decrease)/Increase From 2014		2014 Increase From 2013	
	\$	%	\$	%
Consulting and outside services	\$ (17,426)	(47.4)%	\$ 256	0.7%
Merger and acquisition	11,162	100.0%	—	—%
Personnel-related	(1,733)	(5.5)%	2,325	8.0%
Facilities and information technology	480	4.9%	848	9.4%
Other expenses	445	12.5%	174	5.2%
Total general and administrative expenses (decrease)/increase	<u>\$ (7,072)</u>	<u>(8.7)%</u>	<u>\$ 3,603</u>	<u>4.6%</u>

## 2015 Compared to 2014

The decrease in consulting and outside services expenses for 2015, compared to 2014, was primarily the result of a decrease in restatement-related costs and litigation expenses. The merger and acquisition expenses in 2015 were primarily the professional and consulting services expenses related to the acquisition and integration of Orad. The decrease in personnel-related expenses for 2015, compared to 2014, was primarily the result of decreased incentive-based compensation accrual.

## 2014 Compared to 2013

The increase in personnel-related expenses for 2014, compared to 2013, was primarily due to an increase in incentive-based compensation accrual and stock based compensation expenses, partially offset by a decrease in salaries expenses and management transition related costs. The increase in facilities and information technology infrastructure costs was primarily the result of increased usage of facilities costs by the general and administrative function.

### Amortization of Intangible Assets

Intangible assets result from acquisitions and include developed technology, customer-related intangibles, trade names and other identifiable intangible assets with finite lives. These intangible assets are amortized using the straight-line method over the estimated useful lives of such assets, which are generally two years to twelve years. Amortization of developed technology is recorded within cost of revenues. Amortization of customer-related intangibles, trade names and other identifiable intangible assets is recorded within operating expenses.

#### Year-Over-Year Change in Amortization of Intangible Assets for the Years Ended December 31, 2015 and 2014

	(dollars in thousands)			
	2015 Increase From 2014		2014 Decrease From 2013	
	\$	%	\$	%
Amortization of intangible assets recorded in cost of revenues	\$ 4,013	8,026.0%	\$ (1,418)	(96.6)%
Amortization of intangible assets recorded in operating expenses	728	44.8%	(1,022)	(38.6)%
Total amortization of intangible assets	\$ 4,741	282.9%	\$ (2,440)	(59.3)%

## 2015 Compared to 2014

The increase in amortization of intangible assets for 2015, compared to 2014, was the result of the intangible assets that we acquired through our acquisition of Orad in June 2015. We had \$32.3 million of unamortized balance of our identifiable intangible assets related to the Orad acquisition, and \$0.9 million of unamortized balance related to all other acquisitions at December 31, 2015. We expect amortization of these intangible assets to be approximately \$10.3 million in 2016 and \$9.3 million in 2017. See Note J, Intangible Assets, to our Consolidated Financial Statements in Item 8 for further information regarding our identifiable intangible assets.

## 2014 Compared to 2013

The decrease in amortization of intangible assets recorded in cost of revenues and operating expenses during 2014, compared to 2013, was primarily the result of certain acquired intangible assets becoming fully amortized.

### Restructuring Costs, Net

#### 2016 Restructuring Plan

In the first quarter of 2016, we commenced restructuring actions that are part of a broad restructuring plan encompassing a series of measures intended to allow us to more efficiently operate in a leaner, and more directed cost structure. These include reductions in our workforce, facilities consolidation, transferring certain business processes to lower cost regions, and reducing other third-party services costs. In connection with this restructuring plan, we expect to incur incremental cash expenditures of approximately \$25 million relating to termination benefits, facility costs, employee overlap expenses and related actions. We anticipate that the restructuring plan will be substantially complete by the end of the second quarter of 2017 and will result in annualized costs savings of approximately \$68 million.

The restructuring charges of \$5.8 million recorded during the quarter ended December 31, 2015, represented an initial elimination of 111 positions worldwide during January and February of 2016.

## 2013 Restructuring Actions

In June 2013, our leadership evaluated the marketing and selling teams and, in an effort to better align sales resources with our strategic goals and enhance our global account team approach, eliminated 31 positions. As a result, we recognized related restructuring costs of \$1.7 million in 2013.

During November and December 2013, our executive management team identified opportunities to lower costs in the supply and hardware technology group by eliminating 29 positions in hardware shared services and 15 positions in the supply and technology group. Additionally, an engineering reorganization at the same time resulted in the elimination of four engineering positions. As a result, we recognized \$1.7 million of related restructuring costs in 2013.

All of the restructuring costs related to 2013 restructuring actions were fully paid as of December 31, 2015, no further actions are anticipated.

## Interest and Other Income (Expense), Net

Interest and other income (expense), net, generally consists of interest income and interest expense.

### Interest and Other Income (Expense) for the Years Ended December 31, 2015 and 2014

	(dollars in thousands)			
	2015 Income (Expense)	Change		2014 Income (Expense)
		\$	%	
Interest income	\$ 113	\$ (13)	(10.3)%	\$ 126
Interest expense	(6,346)	(4,575)	258.3%	(1,771)
Other income (expense), net	(175)	963	(84.6)%	(1,138)
Total interest and other income (expense), net	<u>\$ (6,408)</u>	<u>\$ (3,625)</u>	130.3%	<u>\$ (2,783)</u>

### Interest and Other Income (Expense) for the Years Ended December 31, 2014 and 2013

	(dollars in thousands)			
	2014 Income (Expense)	Change		2013 Income (Expense)
		\$	%	
Interest income	\$ 126	\$ (429)	(77.3)%	\$ 555
Interest expense	(1,771)	(197)	12.5%	(1,574)
Other income (expense), net	(1,138)	(1,481)	(431.8)%	343
Total interest and other income (expense), net	<u>\$ (2,783)</u>	<u>\$ (2,107)</u>	311.7%	<u>\$ (676)</u>

## 2015 Compared to 2014

The increase in interest expense for 2015, compared to 2014, was due to the interest on our outstanding 2.00% convertible senior notes and related debt discount accretion. See Note R, Long Term Debt and Credit Agreement, to our Consolidated Financial Statements in Item 8 for further information. The decrease in other expense for 2015, compared to 2014, was primarily the result of changes in the valuation of a deferred compensation plan. With the increase in our debt, we expect interest expense to increase in 2016.

## 2014 Compared to 2013

The change in interest and other income (expense), net for 2014, compared to 2013, was primarily the result of changes in the valuation of a deferred compensation plan. During 2014, there was an increase in the valuation of the plan obligations resulting in

net expense recorded in other income (expense), compared to a decrease in the valuation in 2013 that resulted in net income recorded as other income (expense).

***(Benefit from) Provision for Income Taxes***

**Provision for Income Taxes for the Years Ended December 31, 2015 and 2014**

	(dollars in thousands)			
	2015	Change		2014
	Benefit	\$	%	Provision
Provision for income taxes	\$ (1,915)	\$ (4,103)	(187.5)%	\$ 2,188

**Provision for Income Taxes for the Years Ended December 31, 2014 and 2013**

	(dollars in thousands)			
	2014	Change		2013
	Provision	\$	%	Provision
Provision for income taxes	\$ 2,188	\$ (751)	(25.6)%	\$ 2,939

Our effective tax rate, which represents our tax provision as a percentage of income before tax, was (338.9)%, 12.9% and 12.2%, respectively, for 2015, 2014 and 2013. Our 2015 provision for income taxes decreased by \$4.1 million from 2014, primarily due to a benefit of \$6.5 million that was recorded as a discrete item resulting from the creation of a deferred tax liability associated with the portion of the convertible note offering that was classified within stockholders' equity. While GAAP requires the offset of the deferred tax liability to be recorded in additional paid in capital, consistent with the equity portion of the convertible senior notes, the creation of the deferred tax liability produced evidence of recoverability of deferred tax assets, which resulted in the release of a valuation allowance, totaling \$6.5 million reflected as an income tax benefit. The \$6.5 million benefit was primarily offset by increased foreign profits, where we currently pay income taxes.

Our 2014 provision for income taxes decreased by \$0.8 million from 2013, primarily as a result of a \$0.3 million benefit for the reversal of a previously accrued Canada withholding tax penalty and a \$0.5 million benefit associated with a change in the Company's indefinite reinvestment assertion with respect to its Canadian subsidiary. During 2013 there were no significant discrete tax items that impacted the tax provision.

We have significant net deferred tax assets that are primarily a result of tax credits and operating loss carryforwards. The realization of the net deferred tax assets is dependent upon the generation of sufficient future taxable income in the applicable tax jurisdictions. We regularly review our deferred tax assets for recoverability with consideration for such factors as historical losses, projected future taxable income, the expected timing of the reversals of existing temporary differences, and tax planning strategies. ASC Topic 740, Income Taxes, requires us to record a valuation allowance when it is more likely than not that some portion or all of the deferred tax assets will not be realized. Based on the magnitude of our deferred tax assets at December 31, 2015 and our level of historical U.S. losses, we have determined that the uncertainty regarding the realization of these assets is sufficient to warrant the need for a full valuation allowance against our U.S. deferred tax assets. We have also determined that a valuation allowance is warranted on a portion of our foreign deferred tax assets.

**LIQUIDITY AND CAPITAL RESOURCES**

***Liquidity and Sources of Cash***

We have generally funded our operations in recent years through the use of existing cash balances, which we have supplemented from time to time with the proceeds of long-term debt, including from the issuance of the convertible senior notes due 2020, and borrowings under our credit facilities.

At December 31, 2015, our principal sources of liquidity included cash and cash equivalents totaling \$17.9 million and available borrowings of \$27.0 million under our credit agreement with KeyBank National Association, as administrative agent, and the other lender parties (the "KeyBank Credit Agreement"), with total liquidity aggregating approximately \$44.9 million. At

December 31, 2015, our working capital was \$(167.5) million, compared to \$(157.5) million at December 31, 2014. Our working capital deficit at both dates was largely due to the significant level of deferred revenues recorded on our balance sheet, which consist of service obligations that do not represent meaningful cash requirements. We have deferred a significant portion of revenues from sales transactions and recorded them as deferred revenues. The satisfaction of the obligations that give rise to the deferred revenue are not expected to require significant use of cash in 2016.

Our cash requirements vary depending on factors such as the growth of our business, changes in working capital, capital expenditures, our acquisition of businesses or technologies, obligations under restructuring programs, and our debt servicing costs. We are continuing to focus on maintaining adequate liquidity and further reducing costs and improving our operational efficiency, including pursuant to the restructuring program we announced in February 2016. We believe that we will have sufficient cash, cash equivalents, funds generated from operations and funds available under the Credit Facility to meet our operational objectives for at least the next 12 months, as well as for the foreseeable future. However, if our cash needs fluctuate significantly we may not have sufficient liquidity to meet all of our obligations. We may need additional financing in the future, the availability of which will depend on a variety of factors such as our future financial and operating performance and financial market conditions. We may have difficulty obtaining additional financing on attractive terms or at all.

#### Cerberus Financing Agreement

On February 26, 2016, we entered into a financing agreement with Cerberus Business Finance, LLC, as collateral and administrative agent, and other lender parties (the "Cerberus Financing Agreement"). Pursuant to the Cerberus Financing Agreement, the lenders agreed to provide us with (a) a term loan in the aggregate principal amount of \$100 million (the "Term Loan") and (b) a revolving credit facility of up to a maximum of \$5 million in borrowings outstanding at any time (the "Credit Facility"). We borrowed the full amount of the Term Loan, or \$100 million, as of the closing date, but did not borrow any amount under the Credit Facility as of the Closing Date. All outstanding loans under the Cerberus Financing Agreement will become due and payable on the earlier of February 26, 2021 and the date that is 30 days prior to the scheduled maturity date of our outstanding 2.00% convertible senior notes due 2020, which is June 15, 2020. Prior to the maturity of the Credit Facility, any amounts borrowed under the Credit Facility may be repaid and, subject to the terms and conditions of the Cerberus Financing Agreement, reborrowed in whole or in part without penalty.

Concurrently with the entry into the Cerberus Financing Agreement, we terminated the KeyBank Credit Agreement and repaid all outstanding borrowings under such agreement. There were no penalties paid by us in connection with this termination. In addition to repaying borrowings under the KeyBank Credit Agreement, the Term Loan proceeds will be used to fund the Company's restructuring program announced in February 2016 and to provide ongoing liquidity, including to fund operations.

*Financial terms and prepayments.* Interest accrues on outstanding borrowings under the Term Loan and the Credit Facility at a rate of either the LIBOR Rate (as defined in the Financing Agreement) plus 6.75% or a Reference Rate (as defined in the Financing Agreement) plus 5.75%, at the option of the Company. The Term Loan is subject to a \$1.25 million mandatory principal amortization per quarter commencing in June 2016. The Company may prepay all or any portion of the Term Loan prior to its stated maturity, subject to the payment of certain fees based on the amount repaid. The Company must pay to the lenders, on a monthly basis, an unused line fee at a rate of 0.5% per annum on an amount equal to (1) the total lending commitments under the Credit Facility less (2) the average daily amount of the outstanding borrowings under the Credit Facility during the immediately preceding month. During the term of the Credit Facility, the Company is entitled to reduce the maximum amounts of the lenders' commitments under the Credit Facility, subject to the payment of certain fees based on the amount of any reduction. In addition, subject to limited exceptions the Company will be required to prepay the borrowings under the Cerberus Financing Agreement with proceeds it receives from specified events, including sales of assets, tax refunds, legal judgments and settlements, third party indemnities insurance proceeds and condemnation awards. Each year the Company will be required to prepay the borrowings under the Cerberus Financing Agreement in an amount equal to 50% of the excess cash flow of the Company.

*Collateral and guarantees.* The Company and its subsidiary, Avid Technology Worldwide, Inc. ("Avid Worldwide"), granted a security interest on substantially all of their assets to secure the obligations of all obligors under the Term Loan and the Credit Facility. Avid Worldwide provided a guarantee of all the Company's obligations under the Cerberus Financing Agreement. Future subsidiaries of the Company (other than certain foreign and immaterial subsidiaries) are also required to become a party to the applicable security agreements and guarantee the obligations under the Cerberus Financing Agreement.

*Financial and other covenants.* The Cerberus Financing Agreement contains customary representations and warranties and covenants. These include covenants requiring the Company to maintain a Leverage Ratio (defined to mean the ratio of (a) consolidated total funded indebtedness to (b) consolidated EBITDA) of no greater than 4.35:1.00 for the four quarters ending June 30, 2016, 5.40:1.00 for the four quarters ending September 30, 2016, 4.20:1.00 for the four quarters ending December 31, 2016 and thereafter declining over time from 3.50:1.00 to 2.50:1.00. The Financing Agreement also restricts the Company from making capital expenditures in excess of \$20,000,000 in any fiscal year.

The Financing Agreement contains restrictive covenants that are customary for an agreement of this kind, including, for example, covenants that restrict the Company from incurring additional indebtedness, granting liens, making investments and restricted payments, making acquisitions, paying dividends, and engaging in transactions with affiliates. Certain exceptions to these restrictive covenants are not available in the event the Company's liquidity (defined as cash held in U.S. accounts and availability under the Credit Facility) is less than \$30.0 million.

*Events of default.* The Cerberus Financing Agreement contains customary events of default under which the Company's payment obligations may be accelerated. These events of default include, among others, failure to pay amounts payable under the Cerberus Financing Agreement when due, breach of representations and warranties, failure to perform covenants, a change of control, default or acceleration of material indebtedness, certain judgments and certain impairments to the collateral.

#### 2.00% Convertible Senior Notes

On June 15, 2015, we issued \$125.0 million aggregate principal amount of our 2.00% Convertible Senior Notes due 2020 (the "Notes"). The net proceeds from the offering were \$120.3 million after deducting the offering expenses. The Notes pay interest semi-annually on June 15 and December 15 of each year, beginning on December 15, 2015, at an annual rate of 2.00% and mature on June 15, 2020 unless earlier converted or repurchased in accordance with their terms prior to such date. In connection with the offering of the Notes, on June 9, 2015, we entered into a capped call derivative transaction with a third party (the "Capped Call"). The Capped Call is expected generally to reduce the potential dilution to the common stock and/or offset any cash payments we may be required to make in excess of the principal amount upon conversion of the Notes in the event that the market price per share of the common stock is greater than the strike price of the Capped Call. The Capped Call has a strike price of \$21.94 and a cap price of \$26.00 and is exercisable by us when and if the Notes are converted. The Capped Call expires on June 15, 2020.

#### **Cash Flows**

The following table summarizes our cash flows for the years ended December 31, 2015, 2014 and 2013 (in thousands):

	Year Ended December 31,		
	2015	2014	2013
Net cash used in operating activities	\$ (34,026)	\$ (9,897)	\$ (9,145)
Net cash used in investing activities	(81,796)	(11,800)	(11,536)
Net cash provided by (used in) financing activities	109,558	(436)	(96)
Effect of foreign currency exchange rates on cash and cash equivalents	(890)	(1,014)	(1,410)
Net decrease in cash and cash equivalents	<u>\$ (7,154)</u>	<u>\$ (23,147)</u>	<u>\$ (22,187)</u>

#### Cash Flows from Operating Activities

Cash used in operating activities aggregated \$34.0 million for the year ended December 31, 2015. The cash usage during 2015 was primarily attributable to the annual bonus payments, product development costs, and the professional and consulting services related to the acquisition of Orad.

#### Cash Flows from Investing Activities

For the year ended December 31, 2015, the net cash flow used in investing activities reflected \$66.0 million used for our acquisition of Orad, and \$15.3 million used for the purchase of property and equipment. Our purchases of property and

equipment largely consist of computer hardware and software to support R&D activities and information systems and leasehold improvements.

### Cash Flows from Financing Activities

For the year ended December 31, 2015, the net cash flow provided by financing activities reflected \$120.4 million net proceeds from the Notes due 2020, \$10.1 million paid for the Capped Call, \$8.0 million paid for the shares of common stock we repurchased, and \$1.2 million issuance costs paid for our Credit Agreement with KeyBank. At December 31, 2015, we had \$5.0 million in outstanding borrowings under our Credit Agreement with Keybank, which was repaid on February 26, 2016 without penalties.

### CONTRACTUAL AND COMMERCIAL OBLIGATIONS

The following table sets forth future payments that we were obligated to make at December 31, 2015 under existing lease agreements and commitments to purchase inventory and other goods and services (in thousands):

	Total	Less than 1 Year	1 – 3 Years	3 – 5 Years	After 5 Years
Operating leases	\$ 68,031	\$ 17,825	\$ 25,251	\$ 18,242	\$ 6,713
Unconditional purchase obligations (a)	39,500	39,500	—	—	—
	<u>\$ 107,531</u>	<u>\$ 57,325</u>	<u>\$ 25,251</u>	<u>\$ 18,242</u>	<u>\$ 6,713</u>

(a) At December 31, 2015, we had entered into purchase commitments for certain inventory and other goods and services used in our normal operations. The purchase commitments covered by these agreements are generally for a period of less than one year.

Other contractual arrangements or unrecognized tax positions that may result in cash payments consisted of the following at December 31, 2015 (in thousands):

	Total	Less than 1 Year	1 – 3 Years	3 – 5 Years	After 5 Years
Unrecognized tax positions and related interest	\$ 3,217	\$ 121	\$ 3,096	\$ —	\$ —
Stand-by letters of credit	2,566	723	560	1,283	—
	<u>\$ 5,783</u>	<u>\$ 844</u>	<u>\$ 3,656</u>	<u>\$ 1,283</u>	<u>\$ —</u>

We have the Notes of \$125.0 million maturing in June 2020 with semi-annual interest payment of \$1.3 million. On February 26, 2016, we entered into the Financing Agreement and borrowed the full amount of the Term Loan, or \$100 million, as described in more detail in Item 1. Business - Recent Events.

We have letters of credit that are used as security deposits in connection with our leased Burlington, Massachusetts headquarters office space and other leases. In the event of default on the underlying leases, the landlords would, at December 31, 2015, be eligible to draw against the letters of credit to a maximum of \$2.2 million in the aggregate. The letters of credit are subject to aggregate reductions provided that we are not in default of the underlying leases and meet certain financial performance conditions. In no case will the letters of credit amounts for the Burlington leases be reduced to below \$1.2 million in the aggregate throughout the lease periods, all of which extend to May 2020.

In addition, we have letters of credit totaling \$0.4 million that support our ongoing operations. These letters of credit have various terms and expire during 2016 and beyond, while some of the letters of credit may automatically renew based on the terms of the underlying agreements.

### OFF-BALANCE SHEET ARRANGEMENTS

Other than operating leases, we do not engage in off-balance sheet financing arrangements or have any variable-interest entities. At December 31, 2015, we did not have any off-balance sheet arrangements as defined in Item 303(a)(4)(ii) of Regulation S-K.

## RECENT ACCOUNTING PRONOUNCEMENTS

### *Recent Accounting Pronouncements*

On May 28, 2014, the Financial Accounting Standards Board (the “FASB”) and the International Accounting Standards Board (the “IASB”) issued substantially converged final standards on revenue recognition. The standard outlines a single comprehensive model for entities to use in accounting for revenue arising from contracts with customers and supersedes most current revenue recognition guidance, including industry-specific guidance. The new revenue recognition guidance becomes effective for us on January 1, 2018, and early adoption as of January 1, 2017 is permitted. Entities have the option of using either a full retrospective or a modified approach to adopt the guidance in the ASU. We have not yet selected a transition method and are evaluating the effect that the updated standard will have on our consolidated financial statements and related disclosures.

In April 2015, the FASB issued *ASU No. 2015-03, Simplifying the Presentation of Debt Issuance Costs*, which requires debt issuance costs to be presented in the balance sheet as a direct deduction from the carrying value of the associated debt liability. Early adoption is permitted for financial statements that have not been previously issued. We incurred transaction costs of \$4.7 million relating to the issuance of the Notes, and have adopted the guidance in 2015. In accounting for the transaction costs, we allocated the costs of the offering between debt and equity in proportion to the fair value of the debt and equity recognized. The transaction costs allocated to the debt component of approximately \$3.6 million were recorded as a direct deduction from the face amount of the Notes and are being amortized as interest expense over the term of the Notes using the interest method.

In August 2014, the FASB issued *ASU 2014-15, Presentation of Financial Statements - Going Concern*. ASU 2014-15 provides guidance around management’s responsibility to evaluate whether there is substantial doubt about an entity’s ability to continue as a going concern and to provide related footnote disclosures. For each reporting period, management will be required to evaluate whether there are conditions or events that raise substantial doubt about a company’s ability to continue as a going concern within one year from the date the financial statements are issued. The new standard is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2016. Early adoption is permitted. We are evaluating the potential impact of adopting this standard on our financial statements.

On November 20, 2015, the FASB issued *ASU 2015-17, Balance Sheet Classification of Deferred Taxes*. The standard requires entities to present all deferred tax assets (“DTAs”) and deferred tax liabilities (“DTLs”) as non-current in a classified balance sheet. The standard simplifies the current guidance, which requires entities to separately present DTAs and DTLs as current and non-current in a classified balance sheet. The new standard is effective for fiscal years and interim periods within those fiscal years, beginning December 15, 2016. Early adoption is permitted. We early adopted the guidance to simplify our reporting for the current year and have disclosed the nature of and reason for the change in accounting principle in accordance with the guidance. Prior balance sheets were retrospectively adjusted, resulting in a \$0.3 million reclassification of current DTAs to long-term DTAs in the consolidated balance sheet at December 31, 2014.

On February 25, 2016, the FASB issued new lease accounting standard, *ASU 2016-02, Leases (Topic 842)*. Lessees will need to recognize virtually all of their leases on the balance sheet, by recording a right-of-use asset and lease liability. The new guidance becomes effective for us on January 1, 2019, and early adoption is permitted upon issuance. We are evaluating the potential impact of adopting this standard on its financial statements.

## ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK

### *Foreign Currency Exchange Risk*

We have significant international operations and, therefore, our revenues, earnings, cash flows and financial position are exposed to foreign currency risk from foreign-currency-denominated receivables, payables, sales transactions and net investments in foreign operations. We derive more than half of our revenues from customers outside the United States. This business is, for the most part, transacted through international subsidiaries and generally in the currency of the end-user customers. Therefore, we are exposed to the risks that changes in foreign currency could adversely affect our revenues, net income and cash flow.

We may use derivatives in the form of foreign currency contracts to manage certain short-term exposures to fluctuations in the foreign currency exchange rates that exist as part of our ongoing international business operations. We do not enter into any derivative instruments for trading or speculative purposes. The success of our hedging programs depends on forecasts of transaction activity in the various currencies and contract rates versus financial statement rates. To the extent these forecasts are overstated or understated during periods of currency volatility, we could experience unanticipated currency gains or losses.

We record all derivatives on the balance sheet at fair value. The accounting for changes in the fair value of derivatives depends on the intended use of the derivative and whether we have elected to designate the derivative as a hedge. We may also enter into derivative contracts that are intended to economically hedge certain of our risks, even though we elect not to apply hedge accounting.

In an effort to hedge against the foreign exchange exposure of certain forecasted receivables, intercompany accounts, payables and cash balances, we enter into short-term foreign currency forward contracts. There are two objectives of this foreign currency forward-contract program: (1) to offset any foreign exchange currency risk associated with cash receipts expected to be received from our customers and cash payments expected to be made to our vendors over the next 30-day period and (2) to offset the impact of foreign currency exchange on our net monetary assets denominated in currencies other than the functional currency of the legal entity. These forward contracts typically mature within 30 days of execution. We have not designated these forward contracts as hedging instruments and, accordingly, we recorded the fair value of these contracts at the end of each reporting period in our consolidated balance sheet, with changes in the fair value recorded in our marketing and selling expenses.

We had no outstanding foreign currency forward contracts and short-term foreign currency spot contracts at December 31, 2015. We assumed from Orad outstanding foreign currency spot contracts and call and put options to hedge cash flow risks associated with foreign exchange rates. The aggregate notional value of the outstanding contracts and options was \$1.0 million at December 31, 2015. During the years ended December 31, 2015, 2014 and 2013, we recorded net gains (losses) of \$1.3 million, \$(0.9) million and \$(0.2) million, respectively, that resulted from foreign currency forward contracts, foreign currency denominated transactions, and the revaluation of foreign currency denominated assets and liabilities.

A hypothetical change of 10% in appreciation or depreciation of foreign currency exchange rates from the quoted foreign currency exchange rates at December 31, 2015, would not have a significant impact on our financial position, results of operations or cash flows.

### ***Interest Rate Risk***

At December 31, 2015, we maintained a revolving Credit Facility with Keybank that allowed us to borrow up to \$35.0 million. We had \$5.0 million in outstanding borrowings under our Credit Facility with Keybank at December 31, 2015, which was repaid on February 26, 2016 without penalties. A hypothetical 10% increase or decrease in interest rates paid on outstanding borrowings under the Credit Facility with Keybank would not have had a material impact on our financial position, results of operations or cash flows.

On February 26, 2016, we borrowed \$100.0 million under the Term Loan, that bears interest at approximately 7.75%. We also maintain a revolving Credit Facility that allows us to borrow up to \$5.0 million. A hypothetical 10% increase or decrease in interest rates paid on outstanding borrowings under the Financing Agreement would not have a material impact on our financial position, results of operations or cash flows.

On June 15, 2015, we issued \$125.0 million aggregate principal amount of the Notes pursuant to the terms of an indenture. The Notes pay interest semi-annually on June 15 and December 15 of each year, beginning on December 15, 2015, at an annual rate of 2.00% and mature on June 15, 2020 unless earlier converted or repurchased in accordance with their terms prior to such date. The fair value of the Notes is dependent on the price and volatility of our common stock as well as movements in interest rates. The fair value of our common stock and interest rate changes affect the fair value of the Notes, but do not impact our financial position, cash flows or results of operations due to the fixed nature of the debt obligations.

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY FINANCIAL INFORMATION**

**AVID TECHNOLOGY, INC.**

**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS  
AND FINANCIAL STATEMENT SCHEDULE**

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<a href="#">Consolidated Statements of Operations for the years ended December 31, 2015, 2014 and 2013</a>	58
<a href="#">Consolidated Statements of Comprehensive (Loss) Income for the years ended December 31, 2015, 2014 and 2013</a>	59
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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of  
Avid Technology, Inc.  
Burlington, Massachusetts

We have audited the accompanying consolidated balance sheets of Avid Technology, Inc. and subsidiaries (the “Company”) as of December 31, 2015 and 2014, and the related consolidated statements of operations, comprehensive (loss) income, stockholders' deficit, and cash flows for each of the three years in the period ended December 31, 2015. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the financial statements based on our audits.

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

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2015 and 2014, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2015, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2015, based on the criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 15, 2016 expressed an adverse opinion on the Company's internal control over financial reporting due to the material weaknesses identified.

/s/ **Deloitte & Touche LLP**

Boston, Massachusetts  
March 15, 2016

**AVID TECHNOLOGY, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(in thousands, except per share data)

	Year Ended December 31,		
	2015	2014	2013
<b>Net revenues:</b>			
Products	\$ 336,371	\$ 378,627	\$ 395,531
Services	169,224	151,624	167,881
Total net revenues	505,595	530,251	563,412
<b>Cost of revenues:</b>			
Products	131,881	143,765	159,264
Services	61,501	60,656	63,177
Amortization of intangible assets	4,063	50	1,468
Total cost of revenues	197,445	204,471	223,909
<b>Gross profit</b>	308,150	325,780	339,503
<b>Operating expenses:</b>			
Research and development	95,898	90,390	95,249
Marketing and selling	122,511	133,049	133,890
General and administrative	74,109	81,181	77,578
Amortization of intangible assets	2,354	1,626	2,648
Restructuring costs (recoveries), net	6,305	(165)	5,370
Total operating expenses	301,177	306,081	314,735
<b>Operating income</b>	6,973	19,699	24,768
Interest income	113	126	555
Interest expense	(6,346)	(1,771)	(1,574)
Other (expense) income, net	(175)	(1,138)	343
<b>Income before income taxes</b>	565	16,916	24,092
(Benefit) provision for income taxes	(1,915)	2,188	2,939
<b>Net income</b>	\$ 2,480	\$ 14,728	\$ 21,153
<b>Net income per common share – basic and diluted</b>	\$ 0.06	\$ 0.38	\$ 0.54
Weighted-average common shares outstanding – basic	39,423	39,147	39,044
Weighted-average common shares outstanding – diluted	40,380	39,267	39,070

The accompanying notes are an integral part of the consolidated financial statements.

**AVID TECHNOLOGY, INC.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE (LOSS) INCOME**  
(in thousands)

	<b>Year Ended December 31,</b>		
	<b>2015</b>	<b>2014</b>	<b>2013</b>
Net income	\$ 2,480	\$ 14,728	\$ 21,153
Other comprehensive loss:			
Foreign currency translation adjustments	(6,566)	(7,540)	(1,717)
<b>Comprehensive (loss) income</b>	<b>\$ (4,086)</b>	<b>\$ 7,188</b>	<b>\$ 19,436</b>

*The accompanying notes are an integral part of the consolidated financial statements.*

**AVID TECHNOLOGY, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(in thousands, except per share data)

	<b>December 31,</b>	
	<b>2015</b>	<b>2014</b>
<b><u>ASSETS</u></b>		
Current assets:		
Cash and cash equivalents	\$ 17,902	\$ 25,056
Accounts receivable, net of allowances of \$9,226 and \$10,692 at December 31, 2015 and 2014, respectively	58,807	54,655
Inventories	48,073	48,001
Prepaid expenses	6,548	6,892
Other current assets	6,119	17,932
Total current assets	137,449	152,536
Property and equipment, net	35,481	32,136
Intangible assets, net	33,219	2,445
Goodwill	32,643	—
Long-term deferred tax assets, net	2,011	2,208
Other long-term assets	7,123	2,274
Total assets	<u>\$ 247,926</u>	<u>\$ 191,599</u>
<b><u>LIABILITIES AND STOCKHOLDERS' DEFICIT</u></b>		
Current liabilities:		
Accounts payable	\$ 45,511	\$ 32,951
Accrued compensation and benefits	28,124	32,636
Accrued expenses and other current liabilities	35,354	32,353
Income taxes payable	1,023	5,480
Short-term debt	5,000	—
Deferred revenues	189,887	206,608
Total current liabilities	304,899	310,028
Long-term debt	95,950	—
Long-term deferred tax liabilities, net	3,443	136
Long-term deferred revenues	158,495	208,232
Other long-term liabilities	14,711	14,273
Total liabilities	577,498	532,669
Commitments and contingencies (Note L)		
Stockholders' deficit:		
Preferred stock, \$0.01 par value, 1,000 shares authorized; no shares issued or outstanding	—	—
Common stock, \$0.01 par value, 100,000 shares authorized; 42,339 shares issued, and 39,530 shares and 39,294 shares outstanding at December 31, 2015 and 2014, respectively	423	423
Additional paid-in capital	1,055,838	1,049,969
Accumulated deficit	(1,319,318)	(1,321,798)
Treasury stock at cost, net of reissuances, 2,809 shares and 3,045 shares at December 31, 2015 and 2014, respectively	(58,336)	(68,051)
Accumulated other comprehensive loss	(8,179)	(1,613)
Total stockholders' deficit	(329,572)	(341,070)
Total liabilities and stockholders' deficit	<u>\$ 247,926</u>	<u>\$ 191,599</u>

The accompanying notes are an integral part of the consolidated financial statements.

**AVID TECHNOLOGY, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT**  
(in thousands)

	Shares of Common Stock		Common Stock	Additional Paid-in Capital	Accumulated Deficit	Treasury Stock	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Deficit
	Issued	In Treasury						
Balances at January 1, 2013	42,339	(3,403)	423	1,039,562	(1,357,679)	(75,542)	7,644	(385,592)
Stock issued pursuant to employee stock plans		146		(3,095)		2,999		(96)
Stock-based compensation				6,917				6,917
Net income					21,153			21,153
Other comprehensive loss							(1,717)	(1,717)
Balances at December 31, 2013	42,339	(3,257)	423	1,043,384	(1,336,526)	(72,543)	5,927	(359,335)
Stock issued pursuant to employee stock plans		212		(4,928)		4,492		(436)
Stock-based compensation				11,513				11,513
Net income					14,728			14,728
Other comprehensive loss							(7,540)	(7,540)
Balances at December 31, 2014	42,339	(3,045)	423	1,049,969	(1,321,798)	(68,051)	(1,613)	(341,070)
Stock issued pursuant to employee stock plans		823		(14,215)		17,691		3,476
Stock-based compensation				9,514				9,514
Convertible senior notes conversion feature (net of taxes of \$6,493 and net of issuance cost of \$1,088)				20,718				20,718
Purchase of capped call transaction				(10,125)				(10,125)
Repurchase of common stock		(587)		(23)		(7,976)		(7,999)
Net income					2,480			2,480
Other comprehensive loss							(6,566)	(6,566)
Balances at December 31, 2015	42,339	(2,809)	\$423	\$1,055,838	\$(1,319,318)	\$(58,336)	\$(8,179)	\$(329,572)

The accompanying notes are an integral part of the consolidated financial statements.

**AVID TECHNOLOGY, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)

	Year Ended December 31,		
	2015	2014	2013
<b>Cash flows from operating activities:</b>			
Net income	\$ 2,480	\$ 14,728	\$ 21,153
Adjustments to reconcile net income to net cash used in operating activities:			
Depreciation and amortization	20,088	17,954	22,767
(Recovery) provision for doubtful accounts	(23)	(143)	157
Gain on sales of assets	—	—	(125)
Stock-based compensation expense	9,514	11,513	6,917
Non-cash interest expense	2,890	220	294
Unrealized foreign currency transaction gains	(7,013)	(6,730)	(10)
(Benefit) provision for deferred taxes	(6,693)	69	730
Changes in operating assets and liabilities:			
Accounts receivable	2,442	2,258	11,030
Inventories	3,056	12,122	9,021
Prepaid expenses and other current assets	10,000	(2,130)	4,393
Accounts payable	11,232	(947)	(1,416)
Accrued expenses, compensation and benefits and other liabilities	(11,842)	(5,758)	8,932
Income taxes payable	(1,041)	(1,090)	(1,324)
Deferred revenues	(69,116)	(51,963)	(91,664)
<b>Net cash used in operating activities</b>	<b>(34,026)</b>	<b>(9,897)</b>	<b>(9,145)</b>
<b>Cash flows from investing activities:</b>			
Purchases of property and equipment	(15,330)	(13,292)	(11,625)
Change in other long-term assets	(43)	(8)	(36)
Payments for business acquisitions, net of cash acquired	(65,967)	—	—
Proceeds from divestiture of consumer business	—	1,500	—
Proceeds from sale of assets	—	—	125
Increase in restricted cash	(456)	—	—
<b>Net cash used in investing activities</b>	<b>(81,796)</b>	<b>(11,800)</b>	<b>(11,536)</b>
<b>Cash flows from financing activities:</b>			
Proceeds from long-term debt, net of issuance costs	120,401	—	—
Payments for repurchase of common stock	(7,999)	—	—
Cash paid for capped call transaction	(10,125)	—	—
Proceeds from the issuance of common stock under employee stock plans	5,035	252	177
Common stock repurchases for tax withholdings for net settlement of equity awards	(1,559)	(688)	(273)
Proceeds from revolving credit facilities	70,500	25,500	—
Payments on revolving credit facilities	(65,500)	(25,500)	—
Payments for credit facility issuance costs	(1,195)	—	—
<b>Net cash provided by (used in) financing activities</b>	<b>109,558</b>	<b>(436)</b>	<b>(96)</b>
Effect of exchange rate changes on cash and cash equivalents	(890)	(1,014)	(1,410)
Net decrease in cash and cash equivalents	(7,154)	(23,147)	(22,187)
Cash and cash equivalents at beginning of year	25,056	48,203	70,390
Cash and cash equivalents at end of year	<u>\$ 17,902</u>	<u>\$ 25,056</u>	<u>\$ 48,203</u>
<b>Supplemental information:</b>			
Cash paid for income taxes, net of refunds	\$ 2,251	\$ 2,146	\$ 2,173
Cash paid for interest	3,456	1,551	1,281
Non-cash transaction – property and equipment included in accounts payable or accruals	500	—	—
Issuance costs for long-term debt	130	—	—

The accompanying notes are an integral part of the consolidated financial statements.

**AVID TECHNOLOGY, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**A. BUSINESS**

***Description of Business***

Avid Technology, Inc. (“Avid” or the “Company”) provides technology solutions that enable the creation, distribution and monetization of audio and video content. Specifically, the Company develops, markets, sells and supports software and hardware for digital media content production, management and distribution. Digital media are video, audio or graphic elements in which the image, sound or picture is recorded and stored as digital values, as opposed to analog or tape-based signals. The Company’s products are used in production and post-production facilities; film studios; network, affiliate, independent and cable television stations; recording studios; live-sound performance venues; advertising agencies; government and educational institutions; corporate communication departments; and by independent video and audio creative professionals, as well as aspiring professionals and enthusiasts. Projects produced using Avid’s products include feature films, television programming, live events, news broadcasts, commercials, music, video and other digital media content.

***Management Plans***

The Company has generally funded operations in recent years through the use of existing cash balances, supplemented from time to time with borrowings under credit facilities. Cash used in operating activities aggregated \$34.0 million for the year ended December 31, 2015.

In the first quarter of 2016, the Company commenced restructuring actions that are part of a broad restructuring plan encompassing a series of measures intended to allow the Company to more efficiently operate in a leaner, and more directed cost structure. These include reductions in the Company’s workforce, facilities consolidation, transferring certain business processes to lower cost regions, and reducing other third-party services costs. In connection with this restructuring plan, the Company expects to incur incremental cash expenditures of approximately \$25 million relating to termination benefits, facility costs, employee overlap expenses and related actions. The Company anticipates that the restructuring plan will be substantially complete by the end of the second quarter of 2017 and when fully implemented, is expected to result in annualized costs savings of appropriately \$68 million.

In connection with the cost efficiency program, on February 26, 2016, the Company entered into a term loan with an aggregate principal amount of \$100 million and up to a maximum of \$5 million in revolving credit (collectively, the “Financing Agreement”). All outstanding loans under the Financing Agreement will become due and payable in February 2021, or in May 2020 if the \$125.0 million in outstanding principal from the 2.00% convertible senior notes due June 15, 2020 have not been repaid or refinanced. The Financing Agreement requires the Company to comply with a financial statement covenant that stipulates a maximum leverage ratio commencing in June 30, 2016. Proceeds from the Financing Agreement will be used to replace the existing \$35 million revolving credit facility, finance the Company’s efficiency program and other initiatives, and provide operating flexibility throughout the remainder of the transformation in this period of heightened market volatility. The Company estimates that after paying for both debt issuance costs and the efficiency program, the new financing will provide approximately \$70 million of available liquidity, about half of which replaces the existing revolving credit facility with the remainder providing incremental liquidity to fund operations.

Concurrent with entering into the Financing Agreement, the Company terminated its existing revolving credit agreement, and repaid all outstanding borrowings under the revolving credit agreement. There were no penalties paid by the Company in connection with the termination of the revolving credit agreement.

The Company’s principal sources of liquidity include cash and cash equivalents totaling \$17.9 million at December 31, 2015 and the proceeds from the Financing Agreement. The Company’s cash requirements vary depending on factors such as the growth of the business, changes in working capital, capital expenditures, acquisitions of businesses or technologies and obligations under restructuring programs. Management expects to operate the business and execute its strategic initiatives principally with funds generated from operations and the proceeds from the Financing Agreement. Management anticipates that the Company will have sufficient internal and external sources of liquidity to fund operations and anticipated working capital and other expected cash needs for at least the next twelve months as well as for the foreseeable future.

## **B. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

### ***Principles of Consolidation***

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. Intercompany balances and transactions have been eliminated.

### ***Basis of Presentation***

The Company's preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the dates of the financial statements and the reported amounts of revenues and expenses during the reported periods. Actual results could differ from the Company's estimates.

### ***Revenue Recognition***

#### **General**

The Company commences revenue recognition when persuasive evidence of an arrangement exists, delivery has occurred, the sales price is fixed or determinable and collection is reasonably assured. Generally, the products the Company sells do not require significant production, modification or customization. Installation of the Company's products is generally routine, consists of implementation and configuration and does not have to be performed by the Company.

At the time of a sales transaction, the Company makes an assessment of the collectability of the amount due from the customer. Revenues are recognized only if it is reasonably assured that collection will occur. When making this assessment, the Company considers customer credit-worthiness and historical payment experience. If it is determined from the outset of the arrangement that collection is not reasonably assured, revenues are recognized on a cash basis, provided that all other revenue recognition criteria are satisfied. At the outset of the arrangement, the Company also assesses whether the fee associated with the order is fixed or determinable and free of contingencies or significant uncertainties. When assessing whether the fee is fixed or determinable, the Company considers the payment terms of the transaction, the Company's collection experience in similar transactions without making concessions, and the Company's involvement, if any, in third-party financing transactions, among other factors. If the fee is not fixed or determinable, revenues are recognized only as payments become due from the customer, provided that all other revenue recognition criteria are met. If a significant portion of the fee is due after the Company's normal payment terms, the Company evaluates whether the Company has sufficient history of successfully collecting past transactions with similar terms without offering concessions. If that collection history is sufficient, revenue recognition commences, upon delivery of the products, assuming all other revenue recognition criteria are satisfied. If the Company was to make different judgments or assumptions about any of these matters, it could cause a material increase or decrease in the amount of revenues reported in a particular period.

The Company often receives multiple purchase orders or contracts from a single customer or a group of related customers that are evaluated to determine if they are, in effect, part of a single arrangement. In situations when the Company has concluded that two or more orders with the same customer are so closely related that they are, in effect, parts of a single arrangement, the Company accounts for those orders as a single arrangement for revenue recognition purposes. In other circumstances, when the Company has concluded that two or more orders with the same customer are independent buying decisions, such as an earlier purchase of a product and a subsequent purchase of a software upgrade or maintenance contract, the Company accounts for those orders as separate arrangements for revenue recognition purposes.

For many of the Company's products, there has been an ongoing practice of Avid making available at no charge to customers minor feature and compatibility enhancements as well as bug fixes on a when-and-if-available basis (collectively "Software Updates"), for a period of time after initial sales to end users. The implicit obligation to make such Software Updates available to customers over a period of time represents implied post-contract customer support, which is deemed to be a deliverable in each arrangement and is accounted for as a separate element ("Implied Maintenance Release PCS").

Over the course of the last two years, in connection with a strategic initiative to increase support and other recurring revenue streams, the Company has taken a number of steps to eliminate the longstanding practice of providing Implied Maintenance Release PCS for the Media Composer, Pro Tools and Sibelius product lines. On Media Composer 8.0 in particular, which was released in May 2014, management has (i) clearly communicated a policy of no longer providing any Software Updates or other support to customers that are not covered under a paid support plan and (ii) implemented robust digital rights management tools to enforce the policy. With the new

policy and technology for Media Composer 8.0 in place, combined with management's intent to continue to adhere to the policy, management concluded in the third quarter of 2015 that Implied Maintenance Release PCS for Media Composer 8.0 transactions no longer exists. As a result of the conclusion that Implied Maintenance Release PCS on Media Composer 8.0 has ended, revenue and net income for the twelve months ended December 31, 2015 increased by \$13.0 million, reflecting the recognition of orders received after the launch of Media Composer 8.0 that would have qualified for earlier recognition using the residual method of accounting. In addition, as the elimination of Implied Maintenance Release PCS also resulted in the accelerated recognition of maintenance and product revenues that were previously being recognized over the expected period of Implied Maintenance Release PCS rather than the contractual maintenance period, the change in the estimated amortization period of transactions being recognized on a ratable basis resulted in an additional \$9.5 million of revenue during the twelve months ended December 31, 2015. Management also concluded in the fourth quarter of 2015 that Implied Maintenance Release PCS on Sibelius 8.0 had ended, which did not have a significant impact on revenue recognition for the twelve months ended December 31, 2015. Management will continue to evaluate the judgment of whether Implied Maintenance Release PCS exists on each product line and version. If and when management concludes Implied Maintenance Release PCS no longer exists for other product lines or versions in future quarters, software revenue related to orders affected will be accelerated and prospective revenue recognition on new product orders will be recognized upfront, assuming all other revenue recognition criteria are met and vendor specific objective evidence ("VSOE") of fair value exists for all undelivered elements.

The Company enters into certain contractual arrangements that have multiple elements, one or more of which may be delivered subsequent to the delivery of other elements. These multiple-deliverable arrangements may include products, support, training, professional services and Implied Maintenance Release PCS. For these multiple-element arrangements, the Company allocates revenue to each deliverable of the arrangement based on the relative selling prices of the deliverables. In such circumstances, the Company first determines the selling price of each deliverable based on (i) VSOE of fair value if that exists; (ii) third-party evidence of selling price ("TPE"), when VSOE does not exist; or (iii) best estimate of the selling price ("BESP"), when neither VSOE nor TPE exists. Revenue is then allocated to the non-software deliverables as a group and to the software deliverables as a group using the relative selling prices of each of the deliverables in the arrangement based on the selling price hierarchy. The Company's process for determining BESP for deliverables for which VSOE or TPE does not exist involves significant management judgment. In determining BESP, the Company considers a number of data points, including:

- the pricing established by management when setting prices for deliverables that are intended to be sold on a standalone basis;
- contractually stated prices for deliverables that are intended to be sold on a standalone basis;
- the pricing of standalone sales that may not qualify as VSOE of fair value due to limited volumes or variation in prices; and
- other pricing factors, such as the geographical region in which the products are sold and expected discounts based on the customer size and type.

In determining a BESP for Implied Maintenance Release PCS, which the Company does not sell separately, the Company considers (i) the service period for the Implied Maintenance Release PCS, (ii) the differential in value of the Implied Maintenance Release PCS deliverable compared to a full support contract, (iii) the likely list price that would have resulted from the Company's established pricing practices had the deliverable been offered separately, and (iv) the prices a customer would likely be willing to pay.

The Company estimates the service period of Implied Maintenance Release PCS based on the length of time the product version purchased by the customer is planned to be supported with Software Updates. If facts and circumstances indicate that the original service period of Implied Maintenance Release PCS for a product has changed significantly after original revenue recognition has commenced, the Company will modify the remaining estimated service period accordingly and recognize the then-remaining deferred revenue balance over the revised service period.

The Company has established VSOE of fair value for all professional services and training and for some of the Company's support offerings. The Company's policy for establishing VSOE of fair value consists of evaluating standalone sales, where available, to determine if a substantial portion of the transactions fall within a reasonable range. If a sufficient volume of standalone sales exist and the standalone pricing for a substantial portion of the transactions falls within a reasonable range, management concludes that VSOE of fair value exists.

In accordance with ASU No. 2009-14, the Company excludes from the scope of software revenue recognition requirements the Company's sales of tangible products that contain both software and non-software components that function together to deliver the essential functionality of the tangible products. The Company adopted ASU No. 2009-13 and ASU No. 2009-14 prospectively on January 1, 2011 for new and materially modified arrangements originating after December 31, 2010.

Prior to the Company's adoption of ASU No. 2009-14, the Company primarily recognized revenues using the revenue recognition criteria of Accounting Standards Codification, or ASC, Subtopic 985-605, Software-Revenue Recognition. As a result of the

Company's adoption of ASU No. 2009-14 on January 1, 2011, a majority of the Company's products are now considered non-software elements under GAAP, which excludes them from the scope of ASC Subtopic 985-605 and includes them within the scope of ASC Topic 605, Revenue Recognition. Because the Company had not been able to establish VSOE of fair value for Implied Maintenance Release PCS, as described further below, substantially all revenue arrangements prior to January 1, 2011 were recognized on a ratable basis over the service period of Implied Maintenance Release PCS. Subsequent to January 1, 2011 and the adoption of ASU No. 2009-14, the Company determines a relative selling price for all elements of the arrangement through the use of BESP, as VSOE and TPE are typically not available, resulting in revenue recognition upon delivery of arrangement consideration attributable to product revenue, provided all other criteria for revenue recognition are met, and revenue recognition of Implied Maintenance Release PCS and other service and support elements over time as services are rendered.

#### Revenue Recognition of Non-Software Deliverables

Revenue from products that are considered non-software deliverables is recognized upon delivery of the product to the customer. Products are considered delivered to the customer once they have been shipped and title and risk of loss has been transferred. For most of the Company's product sales, these criteria are met at the time the product is shipped. Revenue from support that is considered a non-software deliverable is initially deferred and is recognized ratably over the contractual period of the arrangement, which is generally 12 months. Professional services and training services are typically sold to customers on a time and materials basis. Revenue from professional services and training services that are considered non-software deliverables is recognized for these deliverables as services are provided to the customer. Revenue for Implied Maintenance Release PCS that is considered a non-software deliverable is recognized ratably over the service period of Implied Maintenance Release PCS, which ranges from 1 to 8 years.

#### Revenue Recognition of Software Deliverables

The Company recognizes the following types of elements sold using software revenue recognition guidance: (i) software products and software upgrades, when the software sold in a customer arrangement is more than incidental to the arrangement as a whole and the product does not contain hardware that functions with the software to provide essential functionality, (ii) initial support contracts where the underlying product being supported is considered to be a software deliverable, (iii) support contract renewals, and (iv) professional services and training that relate to deliverables considered to be software deliverables. Because the Company does not have VSOE of the fair value of its software products, the Company is permitted to account for its typical customer arrangements that include multiple elements using the residual method. Under the residual method, the VSOE of fair value of the undelivered elements (which could include support, professional services or training, or any combination thereof) is deferred and the remaining portion of the total arrangement fee is recognized as revenue for the delivered elements. If evidence of the VSOE of fair value of one or more undelivered elements does not exist, revenues are deferred and recognized when delivery of those elements occurs or when VSOE of fair value can be established. VSOE of fair value is typically based on the price charged when the element is sold separately to customers. The Company is unable to use the residual method to recognize revenues for many arrangements that include products that are software deliverables under GAAP since VSOE of fair value does not exist for Implied Maintenance Release PCS elements, which are included in many of the Company's arrangements.

For software products that include Implied Maintenance Release PCS, an element for which VSOE of fair value does not exist, revenue for the entire arrangement fee, which could include combinations of product, professional services, training and support, is recognized ratably as a group over the longest service period of any deliverable in the arrangement, with recognition commencing on the date delivery has occurred for all deliverables in the arrangement (or begins to occur in the case of professional services, training and support). Standalone sales of support contracts are recognized ratably over the service period of the product being supported.

From time to time, the Company offers certain customers free upgrades or specified future products or enhancements. When a software deliverable arrangement contains an Implied Maintenance Release PCS deliverable, revenue recognition of the entire arrangement will only commence when any free upgrades or specified future products or enhancements have been delivered, assuming all other products in the arrangement have been delivered and all services, if any, have commenced.

#### Other Revenue Recognition Policies

In a limited number of arrangements, the professional services and training to be delivered are considered essential to the functionality of the Company's software products. If services sold in an arrangement are deemed to be essential to the functionality of the software products, the arrangement is accounted for using contract accounting. As the Company has concluded that it cannot reliably estimate its contract costs, the Company uses the completed contract method of contract accounting. The completed contract method of

accounting defers all revenue and costs until the date that the products have been delivered and professional services, exclusive of post-contract customer support, have been completed. Deferred costs related to fully deferred contracts are recorded as a component of inventories in the consolidated balance sheet, and generally all other costs of sales are recognized when revenue recognition commences.

The Company records as revenues all amounts billed to customers for shipping and handling costs and records its actual shipping costs as a component of cost of revenues. Reimbursements received from customers for out-of-pocket expenses are recorded as revenues, with related costs recorded as cost of revenues. The Company presents revenues net of any taxes collected from customers and remitted to government authorities.

In the consolidated statements of operations, the Company classifies revenues as product revenues or services revenues. For multiple-element arrangements that include both product and service elements, including Implied Maintenance Release PCS, the Company evaluates available indicators of fair value and applies its judgment to reasonably classify the arrangement fee between product revenues and services revenues. The amount of multiple-element arrangement fees classified as product and service revenues based on management estimates of fair value when VSOE of fair value for all elements of an arrangement does not exist could differ from amounts classified as product and service revenues if VSOE of fair value for all elements existed.

#### ***Allowance for Sales Returns and Exchanges***

The Company maintains allowances for estimated potential sales returns and exchanges from its customers. The Company records a provision for estimated returns and other allowances as a reduction of revenues in the same period that related revenues are recorded based on historical experience and specific customer analysis. Use of management estimates is required in connection with establishing and maintaining a sales allowance for expected returns and other credits. If actual returns differ from the estimates, additional allowances could be required.

The following table sets forth the activity in the allowance for sales returns and exchanges for the years ended December 31, 2015, 2014 and 2013 (in thousands):

	<b>Year Ended December 31,</b>		
	<b>2015</b>	<b>2014</b>	<b>2013</b>
Allowance for sales returns and exchanges – beginning of year	\$ 9,510	\$ 12,519	\$ 19,460
Additions and adjustments to the allowance	8,468	9,260	9,243
Deductions against the allowance	(9,395)	(12,269)	(16,184)
Allowance for sales returns and exchanges – end of year	<u>\$ 8,583</u>	<u>\$ 9,510</u>	<u>\$ 12,519</u>

The allowance for sales returns and exchanges, which is recorded as a reduction to gross accounts receivable, reflects an estimate of amounts invoiced that will not be collected, as well as other allowances and credits that have been or are expected to offset the trade receivables. Since many of the Company's transactions require some or all of amounts invoiced to be recorded in deferred revenue under GAAP due to revenue recognition considerations, the Company has recorded reductions to deferred revenue of \$3.2 million, \$3.7 million and \$6.1 million as of December 31, 2015, 2014 and 2013, respectively, to eliminate the estimated deferred revenue attributable to transactions already provided for by the sales, returns and exchanges allowance.

### **Allowances for Doubtful Accounts**

The Company maintains allowances for estimated losses from bad debt resulting from the inability of its customers to make required payments for products or services. When evaluating the adequacy of the allowances, the Company analyzes accounts receivable balances, historical bad debt experience, customer concentrations, customer credit worthiness and current economic trends. To date, actual bad debts have not differed materially from management's estimates.

The following table sets forth the activity in the allowance for doubtful accounts for the years ended December 31, 2015, 2014 and 2013 (in thousands):

	Year Ended December 31,		
	2015	2014	2013
Allowance for doubtful accounts – beginning of year	\$ 1,182	\$ 1,444	\$ 1,517
Bad debt (recovery) expense	(23)	(143)	157
Reduction in allowance for doubtful accounts	(516)	(119)	(230)
Allowance for doubtful accounts – end of year	\$ 643	\$ 1,182	\$ 1,444

### **Translation of Foreign Currencies**

The functional currency of each of the Company's foreign subsidiaries is the local currency, except for the Irish manufacturing branch whose functional currency is the U.S. dollar due to the extensive interrelationship of the operations of the Irish branch and the U.S. parent and the high volume of intercompany transactions between that branch and the parent. The assets and liabilities of the subsidiaries whose functional currencies are other than the U.S. dollar are translated into U.S. dollars at the current exchange rate in effect at the balance sheet date. Income and expense items for these entities are translated using rates that approximate those in effect during the period. Cumulative translation adjustments are included in accumulated other comprehensive income (loss), which is reflected as a separate component of stockholders' deficit. The Company does not record tax provisions or benefits for the net changes in the foreign currency translation adjustment as the Company intends to permanently reinvest undistributed earnings in its foreign subsidiaries.

The U.S. parent company and its Irish manufacturing branch, both of whose functional currency is the U.S. dollar, carry certain monetary assets and liabilities denominated in currencies other than the U.S. dollar. These assets and liabilities typically include cash, accounts receivable and intercompany operating balances denominated in foreign currencies. These assets and liabilities are remeasured into the U.S. dollar at the current exchange rate in effect at the balance sheet date. Foreign currency transaction and remeasurement gains and losses are included within marketing and selling expenses in the results of operations. See Note E for the net foreign exchange gains and losses recorded in the Company's statements of operations during the years ended December 31, 2015, 2014 and 2013 that resulted from the gains and losses on Company's foreign currency contracts and the revaluation of the related hedged items.

The U.S. parent company and various other wholly owned subsidiaries have long-term intercompany loan balances denominated in foreign currencies that are remeasured into the U.S. dollar at the current exchange rate in effect at the balance sheet date. Such loan balances are not expected to be settled in the foreseeable future. Any gains and losses relating to these loans are included in the accumulated other comprehensive income (loss), which is reflected as a separate component of stockholders' deficit.

### ***Cash, Cash Equivalents and Marketable Securities***

The Company measures cash equivalents and marketable securities at fair value on a recurring basis. The cash equivalents and market securities consist primarily of money market investments, mutual funds and insurance contracts held in deferred compensation plans. The money market investments and mutual funds held in the Company's deferred compensation plan in the U.S. are reported at fair value within other current assets using quoted market prices with the gains and losses included as other (expense) income in the Company's statement of operations. The insurance contracts held in the deferred compensation plans for employees in Israel and Germany are reported at fair value within other long term assets using other observable inputs. Other than the investments held in the Company's deferred compensation plans, the Company held no marketable securities at December 31, 2015 or 2014. Amortization or accretion of premium or discount is included in interest income (expense) in the results of operations.

### ***Concentration of Credit Risk***

Financial instruments that potentially subject the Company to concentrations of credit risk consist of cash and cash equivalents, foreign currency contracts and accounts receivable. The Company places its cash and cash equivalents with financial institutions that management believes to be of high credit quality, and, generally, there are no significant concentrations in any one issuer. Concentrations of credit risk with respect to trade receivables are limited due to the large number of customers that make up the Company's customer base and their dispersion across different regions. No individual customer accounted for 10% or more of the Company's net revenues or net accounts receivable in the periods presented.

### ***Foreign Currency Risk***

The Company has significant international operations and, therefore, the Company's revenues, earnings, cash flows and financial position are exposed to foreign currency risk from foreign-currency-denominated receivables, payables, sales and expense transactions, and net investments in foreign operations. The Company derives more than half of its revenues from customers outside the United States. This business is, for the most part, transacted through international subsidiaries and generally in the currency of the end-user customers. Therefore, the Company is exposed to the risks that changes in foreign currency could adversely affect its revenues, net income, cash flow and financial position. The Company uses derivatives in the form of foreign currency contracts to manage its short-term exposures to fluctuations in the foreign currency exchange rates that exist as part of its ongoing international business operations. The Company does not enter into any derivative instruments for trading or speculative purposes.

The Company records all foreign currency contract derivatives on the balance sheet at fair value. The accounting for changes in the fair value of derivatives depends on the intended use of the derivative, whether the Company has elected to designate a derivative in a hedging relationship and apply hedge accounting, and whether the hedging relationship has satisfied the criteria necessary to apply hedge accounting. Derivatives designated and qualifying as hedges of the exposure to changes in the fair value of an asset, liability or firm commitment attributable to a particular risk are considered fair value hedges. Derivatives designated and qualifying as hedges of the exposure to variability in expected future cash flows, or other types of forecasted transactions, are considered cash flow hedges. Derivatives may also be designated as hedges of the foreign currency exposure of a net investment in a foreign operation. Hedge accounting generally provides for the matching of the timing of gain or loss recognition on the hedging instrument with the recognition of the changes in the fair value of the hedged asset or liability that are attributable to the hedged risk in a fair value hedge or the earnings effect of the hedged forecasted transactions in a cash flow hedge. Under hedge accounting, the determination of hedge effectiveness is dependent upon whether the gain or loss on the hedging derivative is highly effective in offsetting the gain or loss in the value of the item being hedged. The Company has not accounted for any foreign currency contracts as hedges in the periods presented.

### ***Inventories***

Inventories are stated at the lower of cost (determined on a first-in, first-out basis) or market value. Management regularly reviews inventory quantities on hand and writes down inventory to its realizable value to reflect estimated obsolescence or lack of marketability based on assumptions about future inventory demand and market conditions. Inventory in the digital-media market, including the Company's inventory, is subject to rapid technological change or obsolescence; therefore, utilization of existing inventory may differ from the Company's estimates.

## ***Property and Equipment***

Property and equipment is recorded at cost and depreciated using the straight-line method over the estimated useful life of the asset. The Company typically depreciates its property and equipment using the following minimum and maximum useful lives:

	<b>Depreciable Life (years)</b>	
	<b>Minimum</b>	<b>Maximum</b>
Computer and video equipment and software, including internal use software	2	5
Manufacturing tooling and testbeds	3	5
Office equipment	3	5
Furniture, fixtures and other	3	8

The Company capitalizes certain development costs incurred in connection with its internal use software. Costs incurred in the preliminary stages of development are expensed as incurred. Once an application has reached the development stage, internal and external costs, if direct, are capitalized until the software is substantially complete and ready for its intended use. Capitalized costs are recorded as part of property and equipment. Maintenance and training costs are expensed as incurred. Internal use software is amortized on a straight line basis over its estimated useful life, generally three years.

Leasehold improvements are amortized over the shorter of the useful life of the improvement or the remaining term of the lease. Expenditures for maintenance and repairs are expensed as incurred. Upon retirement or other disposition of assets, the cost and related accumulated depreciation are eliminated from the accounts and the resulting gain or loss is reflected in other (expense) income in the results of operations.

## ***Acquisition-Related Intangible Assets and Goodwill***

Acquisition-related intangible assets consist of customer relationships, developed technology, trade names and non-compete agreements. These assets are determined to have either finite or indefinite lives. For finite-lived intangible assets amortization is straight-line over the estimated useful lives of such assets, which are generally two years to twelve years. Straight-line amortization is used because the Company cannot reliably determine a discernible pattern over which the economic benefits would be realized. The Company does not have any indefinite-lived intangible assets. Intangible assets are tested for impairment when events and circumstances indicate there is an impairment. The impairment test involves comparing the sum of undiscounted cash flows to the carrying value as of the measurement date. Impairment occurs when the carrying value of the assets exceeds the sum of undiscounted cash flows. Impairment is then measured as the difference between the carrying value and fair value determined using a discounted cash flow method. In estimating the fair value using a discounted cash flow method, the Company uses assumptions that include forecast revenues, gross margins, operating profit margins, growth rates and long term discount rates, all of which require significant judgment by management. Changes to these assumptions could affect the estimated fair value of the intangible asset and could result in an impairment charge in future.

The Company performs its annual and interim goodwill impairment tests when it is more likely than not that a goodwill impairment exists. The Company has concluded it has one reporting unit and the annual measurement date is October 31, 2015.

## ***Long-Lived Assets***

The Company periodically evaluates its long-lived assets for events and circumstances that indicate a potential impairment. A long-lived asset is assessed for impairment when the undiscounted expected future cash flows derived from that asset are less than its carrying value. The cash flows used for this analysis take into consideration a number of factors including past operating results, budgets and economic projections, market trends and product development cycles. The amount of any impairment would be equal to the difference between the estimated fair value of the asset, based on a discounted cash flow analysis, and its carrying value.

## ***Advertising Expenses***

All advertising costs are expensed as incurred and are classified as marketing and selling expenses. Advertising expenses were not material in the periods presented.

### ***Research and Development Costs***

Research and development costs are expensed as incurred. Development costs for software to be sold that are incurred subsequent to the establishment of technological feasibility, but prior to the general release of the product, are capitalized. Upon general release, these costs are amortized using the straight-line method over the expected life of the related products, generally 12 to 36 months. The straight-line method generally results in approximately the same amount of expense as that calculated using the ratio that current period gross product revenues bear to total anticipated gross product revenues. The Company periodically evaluates the assets, considering a number of business and economic factors, to determine if an impairment exists. No amounts have been capitalized during 2015, 2014, and 2013 as the costs incurred subsequent to the establishment of technological feasibility have not been material.

### ***Income Taxes***

The Company accounts for income taxes using an asset and liability approach that requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been recognized in the Company's financial statements or tax returns. The Company records deferred tax assets and liabilities based on the net tax effects of tax credits, operating loss carryforwards and temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes compared to the amounts used for income tax purposes. Deferred tax assets are regularly reviewed for recoverability with consideration for such factors as historical losses, projected future taxable income and the expected timing of the reversals of existing temporary differences. The Company is required to record a valuation allowance when it is more likely than not that some portion or all of the deferred tax assets will not be realized.

The Company accounts for uncertainty in income taxes recognized in its financial statements by applying a two-step process to determine the amount of tax benefit to be recognized. First, the tax position must be evaluated to determine the likelihood that it will be sustained upon examination by the taxing authorities, based on the technical merits of the position. If the tax position is deemed more-likely-than-not to be sustained, the tax position is then assessed to determine the amount of benefit to recognize in the financial statements. The amount of the benefit that may be recognized is the largest amount that has a greater than 50% likelihood of being realized upon ultimate settlement. The provision for income taxes includes the effects of any resulting tax reserves ("unrecognized tax benefits") that are considered appropriate as well as the related net interest and penalties.

### ***Accounting for Stock-Based Compensation***

The Company's stock-based employee compensation plans allow the Company to grant stock awards, options, or other equity-based instruments, or a combination thereof, as part of its overall compensation strategy. For stock-based awards granted, the Company records stock-based compensation expense based on the grant date fair value over the requisite service periods for the individual awards, which generally equal the vesting periods. The vesting of stock-based award grants may be based on time, performance conditions, market conditions, or a combination of performance or market conditions.

### ***Product Warranties***

The Company provides warranties on externally sourced and internally developed hardware. The warranty period for all of the Company's products is generally 90 days to one year, but can extend up to 5 years depending on the manufacturer's warranty or local law. For internally developed hardware and in cases where the warranty granted to customers for externally sourced hardware is greater than that provided by the manufacturer, the Company records an accrual for the related liability based on historical trends and actual material and labor costs. At the end of each quarter, the Company reevaluates its estimates to assess the adequacy of the recorded warranty liabilities and adjusts the accrued amounts accordingly.

### ***Computation of Net Income Per Share***

Net income per share is presented for both basic earnings per share ("Basic EPS") and diluted earnings per share ("Diluted EPS"). Basic EPS is based on the weighted-average number of common shares outstanding during the period, excluding non-vested restricted stock held by employees. Diluted EPS is based on the weighted-average number of common and potential common shares outstanding during the period. Potential common shares result from the assumed exercise of outstanding stock options and non-vested restricted stock and restricted stock units, the proceeds and remaining unrecorded compensation expense of which are then assumed to have been used to repurchase outstanding common stock using the treasury stock method. For periods when the Company reports a loss, all potential common stock is considered anti-dilutive. For periods when the Company reports net income, potential common shares with combined purchase prices and unamortized compensation costs in excess of the Company's average common stock fair value for the related period or that are contingently issuable are considered anti-dilutive. The Company issued convertible senior notes

in 2015, and the Company applied the treasury stock method in measuring the dilutive impact of those potential common shares to be issued.

### **Accounting for Restructuring Plans**

The Company records facility-related and contract termination restructuring charges in accordance with ASC Topic 420, *Liabilities: Exit or Disposal Cost Obligations*. Based on the Company's policies for the calculation and payment of severance benefits, the Company accounts for employee-related restructuring charges as an ongoing benefit arrangement in accordance with ASC Topic 712, *Compensation - Nonretirement Postemployment Benefits*. The Company recognizes facility-related restructuring charges upon exiting all or a portion of a leased facility and meeting cease-use and other requirements. The amount of restructuring charges is based on the fair value of the lease obligation for the abandoned space, which includes a sublease assumption that could be reasonably obtained. Restructuring charges and accruals require significant estimates and assumptions, including sub-lease income assumptions. These estimates and assumptions are monitored on at least a quarterly basis for changes in circumstances and any corresponding adjustments to the accrual are recorded in the Company's statement of operations in the period when such changes are known.

### **Related Party Transactions**

From time to time the Company enters into arrangements with parties which may be affiliated with the Company, executive officers and members of the Company's Board of Directors. These transactions are primarily comprised of sales transactions in the normal course of business and are immaterial to the financial statements for all periods presented.

### **Recent Accounting Pronouncements**

On May 28, 2014, the Financial Accounting Standards Board (the "FASB") and the International Accounting Standards Board (the "IASB") issued substantially converged final standards on revenue recognition. The standard outlines a single comprehensive model for entities to use in accounting for revenue arising from contracts with customers and supersedes most current revenue recognition guidance, including industry-specific guidance. The new revenue recognition guidance becomes effective for the Company on January 1, 2018, and early adoption as of January 1, 2017 is permitted. Entities have the option of using either a full retrospective or a modified approach to adopt the guidance in the Accounting Standards Update ("ASU"). The Company has not yet selected a transition method and is evaluating the effect that the updated standard will have on its consolidated financial statements and related disclosures.

In April 2015, the FASB issued *ASU No. 2015-03, Simplifying the Presentation of Debt Issuance Costs*, which requires debt issuance costs to be presented in the balance sheet as a direct deduction from the carrying value of the associated debt liability. Early adoption is permitted for financial statements that have not been previously issued. The Company incurred transaction costs of \$4.7 million relating to the issuance of the convertible senior notes, and has adopted the guidance in 2015. In accounting for the transaction costs, the Company allocated the costs of the offering between debt and equity in proportion to the fair value of the debt and equity recognized. The transaction costs allocated to the debt component of approximately \$3.6 million were recorded as a direct deduction from the face amount of the convertible senior notes and are being amortized as interest expense over the term of the notes using the interest method.

In August 2014, the FASB issued *ASU 2014-15, Presentation of Financial Statements - Going Concern*. *ASU 2014-15* provides guidance around management's responsibility to evaluate whether there is substantial doubt about an entity's ability to continue as a going concern and to provide related footnote disclosures. For each reporting period, management will be required to evaluate whether there are conditions or events that raise substantial doubt about a company's ability to continue as a going concern within one year from the date the financial statements are issued. The new standard is effective for the Company beginning January 1, 2017. Early adoption is permitted. The Company is evaluating the potential impact of adopting this standard on its financial statements.

On November 20, 2015, the FASB issued *ASU 2015-17, Balance Sheet Classification of Deferred Taxes*. The standard requires entities to present all deferred tax assets ("DTAs") and deferred tax liabilities ("DTLs") as non-current in a classified balance sheet. The standard simplifies the current guidance, which requires entities to separately present DTAs and DTLs as current and non-current in a classified balance sheet. The new standard is effective for fiscal years and interim periods within those fiscal years, beginning December 15, 2016. Early adoption is permitted. The Company early adopted the guidance retrospectively, resulting in a \$0.3 million reclassification of current DTAs to long-term DTAs in the consolidated balance sheet at December 31, 2014.

On February 25, 2016, the FASB issued new lease accounting standard, *ASU 2016-02, Leases (Topic 842)*. Lessees will need to recognize virtually all of their leases on the balance sheet, by recording a right-of-use asset and lease liability. The new guidance

becomes effective for the Company on January 1, 2019, and early adoption is permitted upon issuance. The Company is evaluating the potential impact of adopting this standard on its financial statements.

### C. ACQUISITION

On June 23, 2015, the Company completed the acquisition of Orad Hi-Tech Systems Ltd. (“Orad”), an Israeli company previously listed on the Frankfurt Stock Exchange. Each issued and outstanding share of Orad common stock was canceled and converted into the right to receive consideration equal to €5.67 in cash, representing total consideration paid of \$66.0 million based on the exchange rate on the date of closing, net of estimated cash acquired. As a result of the acquisition, the Company incurred merger and integration cost of \$5.7 million, which was recorded as general and administrative expenses in the Company’s statement of operations. Orad provides 3D real-time graphics, video servers and related asset management solutions. The acquisition adds applications to Avid’s Studio Suite which the Company intends to connect to the Avid MediaCentral Platform.

The following table summarizes the purchase price allocation to the fair value of the assets acquired and liabilities assumed at the date of acquisition (in thousands).

Cash	\$	7,477
Accounts receivable, net		6,625
Inventories		3,128
Other current assets		1,217
Property and equipment		1,338
Identifiable intangible assets		37,200
Other assets		3,187
Goodwill		32,643
<b>Total assets acquired</b>		<b>92,815</b>
Accounts payable		(1,395)
Accrued expenses and other current liabilities		(7,769)
Deferred revenue and deposits		(2,714)
Deferred tax liabilities, net		(3,554)
Other long-term liabilities		(3,939)
<b>Total liabilities assumed</b>		<b>(19,371)</b>
<b>Net assets acquired</b>	<b>\$</b>	<b>73,444</b>

The purchase price allocation resulted in goodwill of \$32.6 million, which is not deductible for tax purposes. The goodwill is attributable to expected synergies from combining the operations of Orad with the Company and intangible assets that do not qualify for separate recognition, such as an assembled workforce. The following table presents the identifiable intangible assets acquired and their respective weighted average useful lives (dollars in thousands):

	<b>Weighted Average Life (Years)</b>	<b>Amount</b>
Core and completed technology	4	\$ 31,200
Customer relationships	4	5,800
Trade name	1	200
<b>Total</b>		<b>\$ 37,200</b>

The estimated fair value of intangible assets was determined using the excess earnings method for technology, replacement cost method for customer relationships and relief from royalty method for trade name.

**Pro Forma Financial Information for Acquisition of Orad (in thousands except per share data, unaudited)**

The results of operations of Orad have been included in the results of operations of the Company since June 23, 2015, the date of acquisition. The net revenues and net loss for Orad, which are included in the Company's consolidated statements of operations from the date of acquisition, were \$13.1 million and \$8.5 million, respectively, for the year ended December 31, 2015. The following unaudited pro forma financial information presents the Company's results of operations for the years ended December 31, 2015 and 2014 as if the acquisition of Orad had occurred at the beginning of 2014. The pro forma financial information for the combined entities has been prepared for comparative purposes only and is not indicative of what actual results would have been if the acquisition had taken place at the beginning of fiscal 2014, or of future results.

	Year Ended December 31,	
	2015	2014
Net revenues	\$ 520,918	\$ 570,766
Net (loss) income	(2,300)	8,638
Net (loss) income per share:		
Basic	\$ (0.06)	\$ 0.22
Diluted	\$ (0.06)	\$ 0.22

**D. NET INCOME PER SHARE**

Net income per common share is presented for both basic income per share ("Basic EPS") and diluted income per share ("Diluted EPS"). Basic EPS is based on the weighted-average number of common shares outstanding during the period. Diluted EPS is based on the weighted-average number of common shares and common shares equivalents outstanding during the period.

The potential common shares that were considered anti-dilutive securities were excluded from the diluted earnings per share calculations for the relevant periods either because the sum of the exercise price per share and the unrecognized compensation cost per share was greater than the average market price of the Company's common stock for the relevant period, or because they were considered contingently issuable. The contingently issuable potential common shares result from certain stock options and restricted stock units granted to the Company's employees that vest based on performance conditions, market conditions, or a combination of performance or market conditions.

The following table sets forth (in thousands) potential common shares that were considered anti-dilutive securities.

	Year Ended December 31,		
	2015	2014	2013
Options	1,901	4,748	5,193
Non-vested restricted stock units	470	118	352
Anti-dilutive potential common shares	2,371	4,866	5,545

On June 15, 2015, the Company issued \$125.0 million aggregate principal amount of its 2.00% Convertible Senior Notes due 2020 (the "Notes"). The Notes are convertible into cash, shares of the Company's common stock or a combination of cash and shares of common stock, at the Company's election, based on an initial conversion rate, subject to adjustment. In connection with the offering of the Notes, the Company entered into a capped call transaction with a third party (the "Capped Call") (see Note R, Long-Term Debt and Credit Agreement). The Company uses the treasury stock method in computing the dilutive impact of the Notes. The Notes are convertible into shares but the Company's stock price was less than the conversion price at December 31, 2015, and therefore, the Notes are excluded from diluted income per share. The Capped Call is not reflected in diluted net income per share as it will always be anti-dilutive.

## E. FOREIGN CURRENCY CONTRACTS

As a hedge against the foreign exchange exposure of certain forecasted receivables, payables and cash balances of foreign subsidiaries, the Company enters into short-term foreign currency forward contracts, which typically mature within 30 days of execution. The changes in fair value of the foreign currency forward contracts are intended to offset foreign currency exchange risk on cash flows associated with net monetary assets, and are recorded as gains or losses in the Company's statement of operations in the period of change. The Company had no outstanding foreign currency forward contracts at December 31, 2015. The Company had foreign currency forward contracts outstanding with an aggregate notional value of \$25.4 million at December, 2014 as hedges against such forecasted foreign-currency-denominated receivables, payables and cash balances.

The Company may also enter into short-term foreign currency spot and forward contracts as a hedge against the foreign currency exchange risk associated with certain of its net monetary assets denominated in foreign currencies. The Company had no outstanding short-term foreign currency spot contracts at December 31, 2015. The Company had foreign currency contracts outstanding with an aggregate notional value of \$2.8 million at December 31, 2014. Because these contracts are not accounted for as hedges, the changes in fair value of these foreign currency contracts are recorded as gains or losses in the Company's statement of operations.

The Company assumed from Orad outstanding foreign currency spot contracts and call and put options to hedge cash flow risks associated with foreign exchange rates. The aggregate notional value of the outstanding contracts and options was \$1.0 million at December 31, 2015.

The following table sets forth the balance sheet classification and fair values of the Company's foreign currency contracts (in thousands):

Derivatives Not Designated as Hedging Instruments Under Accounting Standards Codification ("ASC") Topic 815	Balance Sheet Classification	Fair Value at December 31, 2015	Fair Value at December 31, 2014
<b>Financial liabilities:</b>			
Foreign currency contracts	Accrued expenses and other current liabilities	\$14	\$518

The following table sets forth the net foreign exchange gains (losses) recorded as marketing and selling expenses in the Company's statements of operations during the years ended December 31, 2015, 2014 and 2013 that resulted from foreign currency forward contracts, foreign currency denominated transactions, and the revaluation of foreign currency denominated assets and liabilities (in thousands):

	Twelve Months Ended December 31,		
	2015	2014	2013
Net foreign exchange gain (loss) recorded in marketing and selling expenses	\$1,288	\$(908)	\$(187)

See Note F for additional information on the fair value measurements for all financial assets and liabilities, including derivative assets and derivative liabilities, that are measured at fair value on a recurring basis.

## F. FAIR VALUE MEASUREMENTS

### *Assets and Liabilities Measured at Fair Value on a Recurring Basis*

On a recurring basis, the Company measures certain financial assets and liabilities at fair value, including foreign-currency contracts and deferred compensation investments. At December 31, 2015 and 2014, all of the Company's financial assets and liabilities were classified as either Level 1 or Level 2 in the fair value hierarchy. Assets valued using quoted market prices in active markets and classified as Level 1 are certain deferred compensation investments, primarily money market and mutual funds. Assets and liabilities valued based on other observable inputs and classified as Level 2 are foreign currency contracts and certain deferred compensation investments, primarily insurance contracts.

The following tables summarize the Company's fair value hierarchy for its financial assets and liabilities measured at fair value on a recurring basis (in thousands):

	December 31, 2015	Fair Value Measurements at Reporting Date Using		
		Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
<b>Financial Assets:</b>				
Deferred compensation investments (1)	\$ 3,617	\$ 572	\$ 3,045	\$ —
<b>Financial Liabilities:</b>				
Foreign currency contracts	\$ 14	\$ —	\$ 14	\$ —

	December 31, 2014	Fair Value Measurements at Reporting Date Using		
		Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
<b>Financial Assets:</b>				
Deferred compensation investments	\$ 1,859	\$ 1,245	\$ 614	\$ —
<b>Financial Liabilities:</b>				
Foreign currency contracts	\$ 518	\$ —	\$ 518	\$ —

(1) Deferred compensation investments at December 31, 2015 included \$2.4 million of funds that Orad invested in insurance contracts for the post-employment benefits that Orad employees earned.

#### Financial Instruments Not Recorded at Fair Value

The carrying amounts of the Company's other financial assets and liabilities including cash, accounts receivable, accounts payable and accrued liabilities approximate their respective fair values because of the relatively short period of time between their origination and their expected realization or settlement. At December 31, 2015, the net carrying amount of the Notes is \$96.0 million, and the fair value of the Notes is approximately \$85.5 million based on open market trading activity, which constitutes a Level 1 input in the fair value hierarchy.

## G. ACCOUNTS RECEIVABLE

Accounts receivable, net of allowances, consisted of the following at December 31, 2015 and 2014 (in thousands):

	December 31,	
	2015	2014
Accounts receivable	\$ 68,033	\$ 65,347
Less:		
Allowance for doubtful accounts	(643)	(1,182)
Allowance for sales returns and rebates	(8,583)	(9,510)
Total	\$ 58,807	\$ 54,655

## H. INVENTORIES

Inventories consisted of the following at December 31, 2015 and 2014 (in thousands):

	December 31,	
	2015	2014
Raw materials	\$ 9,594	\$ 9,942
Work in process	256	248
Finished goods	38,223	37,811
Total	\$ 48,073	\$ 48,001

At December 31, 2015 and 2014, finished goods inventory included \$5.3 million and \$4.3 million, respectively, associated with products shipped to customers or deferred labor costs for arrangements where revenue recognition had not yet commenced.

## I. PROPERTY AND EQUIPMENT

Property and equipment consisted of the following at December 31, 2015 and 2014 (in thousands):

	December 31,	
	2015	2014
Computer and video equipment and software	\$ 116,751	\$ 113,220
Manufacturing tooling and testbeds	3,044	2,327
Office equipment	4,942	4,664
Furniture, fixtures and other	9,621	8,659
Leasehold improvements	33,744	29,431
	168,102	158,301
Less: Accumulated depreciation and amortization	132,621	126,165
Total	\$ 35,481	\$ 32,136

The Company capitalizes certain development costs incurred in connection with its internal use software. For the year ended December 31, 2015, the Company capitalized \$5.1 million of contract labor and internal labor costs related to internal use software, and recorded the capitalized costs in Computer and video equipment and software. There were \$3.4 million of contract labor and internal labor costs capitalized for the year ended December 31, 2014, and no costs capitalized for the year ended December 31, 2013. Internal use software is amortized on a straight line basis over its estimated useful life of 3 years, and the Company recorded \$1.8 million and \$0.5 million of amortization expense during 2015 and 2014, respectively.

Depreciation and amortization expense related to property and equipment was \$13.7 million, \$16.1 million and \$17.8 million for the years ended December 31, 2015, 2014 and 2013, respectively.

## J. INTANGIBLE ASSETS AND GOODWILL

### Intangible Assets

Amortizing identifiable intangible assets related to the Company's acquisitions or capitalized costs of internally developed or externally purchased software that form the basis for the Company's products consisted of the following at December 31, 2015 and 2014 (in thousands):

	December 31,					
	2015			2014		
	Gross	Accumulated Amortization	Net	Gross	Accumulated Amortization	Net
Completed technologies and patents	\$ 58,032	\$ (30,902)	\$ 27,130	\$ 51,950	\$ (51,950)	\$ —
Customer relationships	54,656	(48,767)	5,889	49,216	(46,771)	2,445
Trade names	1,346	(1,146)	200	5,936	(5,936)	—
Capitalized software costs	4,911	(4,911)	—	5,043	(5,043)	—
Total	<u>\$ 118,945</u>	<u>\$ (85,726)</u>	<u>\$ 33,219</u>	<u>\$ 112,145</u>	<u>\$ (109,700)</u>	<u>\$ 2,445</u>

During 2015, the Company wrote off fully amortized technologies and trade names with gross book values of \$24.3 million and \$4.8 million, respectively. Those technologies and trade names were no longer in use. Amortization expense related to intangible assets in the aggregate was \$6.4 million, \$1.8 million and \$4.9 million for the years ended December 31, 2015, 2014 and 2013, respectively. The Company expects amortization of intangible assets to be approximately \$10.3 million in 2016, \$9.3 million in 2017, \$9.3 million in 2018 and \$4.3 million in 2019.

### Goodwill

The acquisition of Orad resulted in goodwill of \$32.6 million in 2015. As of October 31, 2015, the Company's goodwill impairment measurement date, the Company concluded that it was not more likely than not that a goodwill impairment existed.

## K. OTHER LONG-TERM LIABILITIES

Other long-term liabilities consisted of the following at December 31, 2015 and 2014 (in thousands):

	December 31,	
	2015	2014
Deferred rent	\$ 6,755	\$ 8,236
Accrued restructuring	647	1,334
Deferred compensation	7,309	4,703
Total	<u>\$ 14,711</u>	<u>\$ 14,273</u>

## L. COMMITMENTS AND CONTINGENCIES

### *Operating Lease Commitments*

The Company leases its office space and certain equipment under non-cancelable operating leases. The future minimum lease commitments under these non-cancelable leases at December 31, 2015 were as follows (in thousands):

<u>Year Ending December 31,</u>		
2016	\$	17,825
2017		14,135
2018		11,116
2019		11,042
2020		7,200
Thereafter		6,713
Total	\$	<u>68,031</u>

Included in the operating lease commitments above are obligations under leases for which the Company has vacated the underlying facilities as part of various restructuring plans. These leases expire at various dates through 2021 and represent an aggregate obligation of \$7.0 million through 2021. The Company has restructuring accruals of \$1.7 million at December 31, 2015, which represents the difference between this aggregate future obligation and future sublease income under actual or estimated potential sublease agreements, on a net present value basis, as well as other facilities-related obligations. The Company received \$0.6 million and \$0.7 million of sublease income during the years ended December 31, 2015 and 2014, respectively, but none during the year ended December 31, 2013.

The Company's leases for corporate office space in Burlington, Massachusetts, which expire in May 2020, contain renewal options to extend the respective terms of each lease for up to two additional five-year periods.

The accompanying consolidated results of operations reflect rent expense on a straight-line basis over the term of the leases. Total expense under operating leases was \$14.0 million, \$15.0 million and \$16.3 million for the years ended December 31, 2015, 2014 and 2013, respectively.

### *Other Commitments*

The Company has letters of credit that are used as security deposits in connection with the Company's leased Burlington, Massachusetts office space and other leases. In the event of default on the underlying leases, the landlords would, at December 31, 2015, be eligible to draw against the letters of credit to a maximum of \$2.2 million in the aggregate. The letters of credit are subject to aggregate reductions provided the Company is not in default under the underlying leases and meets certain financial performance conditions. In no case will the letters of credit amounts for the Burlington leases be reduced to below \$1.2 million in the aggregate throughout the lease periods, all of which extend to May 2020.

The Company also has additional letters of credit totaling \$0.4 million that support its ongoing operations. These letters of credit have various terms and expire during 2016 and beyond, while some of the letters of credit may automatically renew based on the terms of the underlying agreements.

### *Purchase Commitments and Sole-Source Suppliers*

At December 31, 2015, the Company had entered into purchase commitments for certain inventory and other goods and services used in its normal operations. The purchase commitments covered by these agreements are generally for a period of less than one year and in the aggregate total \$39.5 million.

The Company depends on sole-source suppliers for certain key hardware components of its products. Although the Company has procedures in place to mitigate the risks associated with its sole-sourced suppliers, the Company cannot be certain that it will be able to obtain sole-sourced components or finished goods from alternative suppliers or that it will be able to do so on commercially reasonable terms without a material impact on its results of operations or financial position. The Company procures product components and builds inventory based on forecasts of product life cycle and customer demand. If the Company is unable to provide

accurate forecasts or manage inventory levels in response to shifts in customer demand, the Company may have insufficient, excess or obsolete product inventory.

### **Contingencies**

In March 2013 and May 2013, two purported securities class action lawsuits were filed against the Company and certain of the Company's former executive officers seeking unspecified damages in the U.S. District Court for the District of Massachusetts. In July 2013, the two cases were consolidated and the original plaintiffs agreed to act as co-plaintiffs in the consolidated case. In September 2013, the co-plaintiffs filed a consolidated amended complaint on behalf of those who purchased the Company's common stock between October 23, 2008 and March 20, 2013. The consolidated amended complaint, which named the Company, certain of the Company's current and former executive officers and the Company's former independent accounting firm as defendants, purported to state a claim for violation of federal securities laws as a result of alleged violations of the federal securities laws pursuant to Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder. In October 2013, the Company filed a motion to dismiss the consolidated amended complaint, resulting in the dismissal of some of the claims, and the dismissal of Mr. Hernandez and one of the two plaintiffs from the case. On December 31, 2014, the parties reached an agreement to settle the case. The agreement called for Avid to cause payment of \$2.5 million in respect of the settlement. The settlement was approved and the case was dismissed on May 12, 2015.

In April and May 2013, the Company received a document preservation request and inquiry from the SEC Division of Enforcement and a federal grand jury subpoena from the Department of Justice requesting certain documents, including in particular documents related to the Company's disclosures regarding the Company's accounting review and revenue transactions. On August 13, 2015, the Company received a letter from the SEC Division of Enforcement stating that the investigation had been completed and that the Division of Enforcement did not intend to recommend any enforcement action against the Company by the SEC. On October 20, 2015, the Company was notified by the Department of Justice that the Department of Justice intends to close its inquiry.

The Company's industry is characterized by the existence of a large number of patents and frequent claims and litigation regarding patent and other intellectual property rights. In addition to the legal proceedings described above, the Company is involved in legal proceedings from time to time arising from the normal course of business activities, including claims of alleged infringement of intellectual property rights and contractual, commercial, employee relations, product or service performance, or other matters. The Company does not believe these matters will have a material adverse effect on the Company's financial position or results of operations. However, the outcome of legal proceedings and claims brought against the Company is subject to significant uncertainty. Therefore, the Company's financial position or results of operations may be negatively affected by the unfavorable resolution of one or more of these proceedings for the period in which a matter is resolved. The Company's results could be materially adversely affected if the Company is accused of, or found to be, infringing third parties' intellectual property rights.

The Company considers all claims on a quarterly basis and based on known facts assesses whether potential losses are considered reasonably possible, probable and estimable. Based upon this assessment, the Company then evaluates disclosure requirements and whether to accrue for such claims in its consolidated financial statements.

The Company records a provision for a liability when it is both probable that a liability has been incurred and the amount of the loss can be reasonably estimated. These provisions are reviewed at least quarterly and adjusted to reflect the impacts of negotiations, settlements, rulings, advice of legal counsel and other information and events pertaining to a particular case.

At December 31, 2015 and as of the date of filing of these consolidated financial statements, the Company believes that, other than as set forth in this note, no provision for liability nor disclosure is required related to any claims because: (a) there is no reasonable possibility that a loss exceeding amounts already recognized (if any) may be incurred with respect to such claim; (b) a reasonably possible loss or range of loss cannot be estimated; or (c) such estimate is immaterial.

Additionally, the Company provides indemnification to certain customers for losses incurred in connection with intellectual property infringement claims brought by third parties with respect to the Company's products. These indemnification provisions generally offer perpetual coverage for infringement claims based upon the products covered by the agreement and the maximum potential amount of future payments the Company could be required to make under these indemnification provisions is theoretically unlimited. To date, the Company has not incurred material costs related to these indemnification provisions; accordingly, the Company believes the estimated fair value of these indemnification provisions is immaterial. Further, certain of the Company's arrangements with customers include clauses whereby the Company may be subject to penalties for failure to meet certain performance obligations; however, the Company has not recorded any related material penalties to date.

The Company provides warranties on externally sourced and internally developed hardware. For internally developed hardware and in cases where the warranty granted to customers for externally sourced hardware is greater than that provided by the manufacturer, the Company records an accrual for the related liability based on historical trends and actual material and labor costs. The following table sets forth the activity in the product warranty accrual account for the years ended December 31, 2015, 2014 and 2013 (in thousands):

Accrual balance at January 1, 2013	\$	4,476
Accruals for product warranties		5,346
Cost of warranty claims		(6,321)
Accrual balance at December 31, 2013		3,501
Accruals for product warranties		3,985
Cost of warranty claims		(4,694)
Accrual balance at December 31, 2014		2,792
Accruals for product warranties		3,025
Cost of warranty claims		(3,583)
Accrual balance at December 31, 2015	\$	2,234

## M. CAPITAL STOCK

### *Preferred Stock*

The Company has authorized up to one million shares of preferred stock, \$0.01 par value per share, for issuance. Each series of preferred stock shall have such rights, preferences, privileges and restrictions, including voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences, as may be determined by the Company's board of directors (the "Board").

### *Common Stock Repurchases*

On June 8, 2015, the Company's Board approved a stock repurchase plan authorizing the Company to repurchase up to \$9.0 million of common stock in open market or other transactions from time to time until September 6, 2015. The Company completed the stock repurchase in July 2015. In aggregate, the Company purchased 586,825 shares for a total purchase price of \$8.0 million. The repurchased shares are held in treasury.

Under some of the Company's equity compensation plans, employees have the option or may be required to satisfy minimum withholding tax obligations by tendering to the Company a portion of the common stock received under the award.

### *Stock Incentive Plans*

In November 2014, the Company registered an aggregate of 3,750,000 of its shares of \$0.01 par value per share common stock, which have been authorized and reserved for issuance under the Avid Technology, Inc. 2014 Stock Incentive Plan (the "Plan"). The Plan was originally adopted by the Company's Board of Directors on September 14, 2014 and approved by the Company's stockholders on October 29, 2014. In connection with the approval of the Plan the Company's Amended and Restated 2005 Stock Incentive Plan has been closed; no additional awards may be granted under that Plan. Shares available for issuance under the Company's 2014 Stock Incentive Plan totaled 2,213,283 at December 31, 2015.

Under the Plan, the Company may grant stock awards or options to purchase the Company's common stock to employees, officers, directors and consultants. The exercise price for options generally must be no less than market price on the date of grant. Awards may be performance-based where vesting or exercisability is conditioned on achieving performance objectives, time-based or a combination of both. Current option grants become exercisable over various periods, typically three to four years for employees and one year for non-employee directors, and have a maximum term of seven to ten years. Restricted stock and restricted stock unit awards with time-based vesting typically vest over three to four years for employees and one year for non-employee directors.

In November 2014, the Compensation Committee of the Board of Directors modified certain market and performance based options and restricted stock units held by seven employees of the Company that were originally granted between 2009 and 2013. The

modifications included (i) a conversion of vesting conditions from market and performance bases to a four year service period, including providing credit for service already rendered prior to the modification and (ii) an acceleration clause that allows vesting of between 50% and 100% of unvested awards if certain 2014 Adjusted EBITDA targets were achieved. In total, options to purchase 933,750 shares and 31,250 restricted stock units were modified, which resulted in incremental compensation expense of \$4.3 million, \$2.3 million of which was recognized upon modification, \$1.5 million of which was recognized in the quarter ended December 31, 2014 upon achieving specific 2014 Adjusted EBITDA targets and the remaining \$0.5 million was recognized in 2015.

The Company uses the Black-Scholes option pricing model to estimate the fair value of stock option grants with time-based vesting. The Black-Scholes model relies on a number of key assumptions to calculate estimated fair value. The assumed dividend yield of zero is based on the fact that the Company has never paid cash dividends and has no present expectation to pay cash dividends and the Company's current Financing Agreement precludes the Company from paying dividends. The expected volatility is now based on actual historic stock volatility for periods equivalent to the expected term of the award. The assumed risk-free interest rate is the U.S. Treasury security rate with a term equal to the expected life of the option. The assumed expected life is based on company-specific historical experience considering the exercise behavior of past grants and models the pattern of aggregate exercises.

The fair value of restricted stock and restricted stock unit awards with time-based vesting is based on the intrinsic value of the awards at the date of grant, as the awards have a purchase price of \$0.01 per share.

The Company also issues stock option grants or restricted stock unit awards with vesting based on market conditions, specifically the Company's stock price and performance conditions, generally using adjusted EBITDA. The fair values and derived service periods for all grants that include vesting based on market conditions are estimated using the Monte Carlo valuation method. For stock option grants that include vesting based on performance conditions, the fair values are estimated using the Black-Scholes option pricing model. For restricted stock unit awards that include vesting based on performance conditions, the fair values are estimated based on the intrinsic values of the awards at the date of grant, as the awards have a purchase price of \$0.01 per share.

Information with respect to options granted under all stock option plans for the year ended December 31, 2015 was as follows:

	Total Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (in thousands)
Options outstanding at January 1, 2015	5,564,111	\$11.20		
Granted	4,000	\$9.10		
Exercised	(421,961)	\$9.55		
Forfeited or canceled	(800,816)	\$14.84		
Options outstanding at December 31, 2015	4,345,334	\$10.68	4.05	\$—
Options vested at December 31, 2015 or expected to vest	4,289,778	\$10.72	4.03	\$—
Options exercisable at December 31, 2015	3,622,761	\$11.28	3.82	\$—

The following table sets forth the weighted-average key assumptions and fair value results for stock options granted during the years ended December 31, 2015, 2014 and 2013:

	Year Ended December 31,		
	2015	2014	2013
Expected dividend yield	0.00%	0.00%	0.00%
Risk-free interest rate	1.07%	1.24%	0.87%
Expected volatility	52.0%	50.3%	50.1%
Expected life (in years)	4.48	4.16	4.68
Weighted-average fair value of options granted (per share)	\$3.91	\$3.03	\$3.33

The cash received from the stock options exercised during the year ended December 31, 2015 was \$5.0 million. During the years ended December 31, 2014 and 2013, the cash received from and the aggregate intrinsic value of stock options exercised was not significant.

Information with respect to non-vested restricted stock units for the year ended December 31, 2015 was as follows:

	Non-Vested Restricted Stock Units			
	Total Shares	Weighted-Average Grant-Date Fair Value	Weighted-Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (in thousands)
Non-vested at January 1, 2015	811,880	\$10.01		
Granted	1,264,116	\$10.31		
Vested	(421,314)	\$10.04		
Forfeited	(388,674)	\$10.90		
Non-vested at December 31, 2015	1,266,008	\$9.97	0.99	\$9,216
Expected to vest	820,741	\$11.14	0.94	\$5,975

The weighted-average grant date fair value of restricted stock units granted during the years ended December 31, 2015, 2014 and 2013 was \$10.31, \$10.19 and \$7.84, respectively. The total fair value of restricted stock units vested during the years ended December 31, 2015, 2014, and 2013 was \$4.2 million, \$2.5 million, and \$1.1 million, respectively.

#### Employee Stock Purchase Plan

The Company's Second Amended and Restated 1996 Employee Stock Purchase Plan (the "ESPP") offers the Company's shares for purchase at a price equal to 85% of the closing price on the applicable offering period termination date. Shares issued under the ESPP are considered compensatory. Accordingly, the Company is required to measure fair value and record compensation expense for share purchase rights granted under the ESPP. The Company last issued shares under the ESPP on October 31, 2015. In July 2015 the Board of Directors approved an amendment to the plan to change the subscription period from three to six months and accordingly to adjust the payroll cap to \$5,000 per plan period. A total of 343,613 shares remained available for issuance under the ESPP at December 31, 2015.

The Company uses the Black-Scholes option pricing model to calculate the fair value of shares issued under the ESPP. The Black-Scholes model relies on a number of key assumptions to calculate estimated fair values. The following table sets forth the weighted-average key assumptions and fair value results for shares issued under the ESPP during the years ended December 31, 2015, 2014 and 2013:

	Year Ended December 31,		
	2015	2014	2013
Expected dividend yield	0.00%	0.00%	0.00%
Risk-free interest rate	0.03%	0.09%	0.09%
Expected volatility	37.0%	35.0%	51.0%
Expected life (in years)	0.24	0.17	0.25
Weighted-average fair value of shares issued (per share)	\$2.15	\$2.02	\$1.00

The following table sets forth the quantities and average prices of shares issued under the ESPP for the years ended December 31, 2015, 2014 and 2013:

	Year Ended December 31,		
	2015	2014	2013
Shares issued under the ESPP	98,300	—	27,936
Average price of shares issued	\$10.17	\$—	\$6.29

The Company did not realize a material tax benefit from the tax deductions for stock option exercises, vested restricted stock units and shares issued under the ESPP during the years ended December 31, 2015, 2014 or 2013.

## **Stock-Based Compensation Expense**

The Company uses the accelerated method of attribution for awards with performance conditions and graded vesting features for options granted. The Company estimates forfeiture rates at the time awards are made based on historical and estimated future turnover rates and applies these rates in the calculation of estimated compensation cost. The estimation of forfeiture rates includes a quarterly review of historical turnover rates and an update of the estimated forfeiture rates to be applied to employee classes for the calculation of stock-based compensation. Forfeiture rates for the calculation of stock-based compensation were estimated and applied based on three classes, non-employee directors, executive management staff and other employees. The Company's annualized estimated forfeiture rates were 0% for non-employee director awards, 10% for executive management staff and 15% for other employee awards. Then-current estimated forfeiture rates are applied quarterly to all outstanding stock options and non-vested restricted stock awards, which may result in a revised estimate of compensation costs related to these stock-based grants.

Stock-based compensation was included in the following captions in the Company's consolidated statements of operations for the years ended December 31, 2015, 2014 and 2013, respectively (in thousands):

	Year Ended December 31,		
	2015	2014	2013
Cost of products revenues	\$ 199	\$ 397	\$ 360
Cost of services revenues	624	279	436
Research and development expenses	461	502	582
Marketing and selling expenses	1,785	3,658	1,778
General and administrative expenses	6,445	6,677	3,761
Total	\$ 9,514	\$ 11,513	\$ 6,917

At December 31, 2015, there was \$9.8 million of total unrecognized compensation cost, before forfeitures, related to non-vested stock-based compensation awards granted under the Company's stock-based compensation plans. The Company expects this amount to be amortized approximately as follows: \$6.0 million in 2016, \$3.0 million in 2017 and \$0.8 million in 2018. At December 31, 2015, the weighted-average recognition period of the unrecognized compensation cost was approximately one year.

## **N. EMPLOYEE BENEFIT PLANS**

### **Employee Benefit Plans**

The Company has a Section 401(k) plan that covers substantially all U.S. employees. The 401(k) plan allows employees to make contributions up to a specified percentage of their compensation. The Company may, upon resolution by the Company's board of directors, make discretionary contributions to the plan. The Company's contributions to the plan totaled \$2.3 million, \$2.2 million and \$2.2 million in 2015, 2014 and 2013, respectively.

In addition, the Company has various retirement and post-employment plans covering certain international employees. Certain of the plans allow the Company to match employee contributions up to a specified percentage as defined by the plans. The Company's contributions to these plans totaled \$2.2 million, \$2.0 million and \$1.2 million in 2015, 2014 and 2013, respectively.

### **Deferred Compensation Plans**

The Company maintains a nonqualified deferred compensation plan (the "Deferred Plan"). The Deferred Plan covers senior management and members of the Board. In November 2013, the Board determined to indefinitely suspend the plan, and not offer participants the opportunity to participate in the Deferred Plan as of 2014. The benefits payable under the Deferred Plan represent an unfunded and unsecured contractual obligation of the Company to pay the value of the deferred compensation in the future, adjusted to reflect deemed investment performance. Payouts are generally made upon termination of employment with the Company. The assets of the deferred plan, as well as the corresponding obligations, were approximately \$0.6 million and \$1.2 million at December 31, 2015 and 2014, respectively, and were recorded in "other current assets" and "accrued compensation and benefits" at those dates.

In connection with the acquisition of a business in 2010, the Company assumed the assets and liabilities of a deferred compensation arrangement for a single individual in Germany. The arrangement represents a contractual obligation of the Company to pay a fixed euro amount for a period specified in the contract. In connection with the acquisition of Orad, the Company assumed the assets and liabilities of a deferred compensation arrangement for employees in Israel. At December 31, 2015 and 2014, the Company's assets and liabilities related to the arrangements consisted of assets recorded in "other long-term assets" of \$3.0 million at December 31, 2015 and \$0.6 million at December 31, 2014, representing the value of related insurance contracts and investments, and liabilities recorded as "long-term liabilities" of \$7.3 million at December 31, 2015 and \$4.7 million at December 31, 2014, respectively, representing the fair value of the estimated benefits to be paid under the arrangements.

## O. INCOME TAXES

Income from before income taxes and the components of the income tax provision consisted of the following for the years ended December 31, 2015, 2014 and 2013 (in thousands):

	Year Ended December 31,		
	2015	2014	2013
Income from operations before income taxes:			
United States	\$ (23,977)	\$ (6,864)	\$ (16,414)
Foreign	24,542	23,780	40,506
Total income from operations before income taxes	<u>\$ 565</u>	<u>\$ 16,916</u>	<u>\$ 24,092</u>
(Benefit) provision for income taxes:			
Current tax expense (benefit):			
Federal	\$ 115	\$ 14	\$ (104)
State	3	83	114
Foreign benefit of net operating losses	(180)	(180)	(170)
Other foreign	3,734	2,217	2,369
Total current tax expense	<u>3,672</u>	<u>2,134</u>	<u>2,209</u>
Deferred tax (benefit) expense:			
Federal benefit related to Note issuance	(6,493)	—	—
Other foreign	906	54	730
Total deferred tax (benefit) expense	<u>(5,587)</u>	<u>54</u>	<u>730</u>
Total (benefit) provision for income taxes	<u>\$ (1,915)</u>	<u>\$ 2,188</u>	<u>\$ 2,939</u>

Net deferred tax assets (liabilities) consisted of the following at December 31, 2015 and 2014 (in thousands):

	December 31,	
	2015	2014
Deferred tax assets:		
Tax credit and net operating loss carryforwards	\$ 318,471	\$ 290,523
Allowances for bad debts	372	231
Difference in accounting for:		
Revenues	54,475	63,916
Costs and expenses	34,116	29,004
Inventories	7,576	7,004
Acquired intangible assets	9,799	13,667
Gross deferred tax assets	424,809	404,345
Valuation allowance	(406,123)	(398,733)
Deferred tax assets after valuation allowance	18,686	5,612
Deferred tax liabilities:		
Difference in accounting for:		
Costs and expenses	(5,654)	(3,540)
Acquired intangible assets	(8,554)	—
Basis difference convertible notes	(5,910)	—
Gross deferred tax liabilities	(20,118)	(3,540)
Net deferred tax (liabilities) assets	\$ (1,432)	\$ 2,072
Recorded as:		
Long-term deferred tax assets, net	2,011	2,208
Long-term deferred tax liabilities, net	(3,443)	(136)
Net deferred tax (liabilities) assets	\$ (1,432)	\$ 2,072

On January 1, 2015 the Company adopted *ASU 2015-17, Balance Sheet Classification of Deferred Taxes*. The standard requires entities to present DTAs and DTLs as non-current in the classified balance sheet. The standard simplifies the current guidance, which requires entities to separately present DTAs and DTLs as current and non-current in a classified balance sheet. The Company early adopted the guidance to simplify its reporting for the current year. The consolidated balance sheet at December 31, 2014 was retrospectively adjusted, resulting in a \$0.3 million reclassification of current DTAs to long-term DTAs.

Deferred tax assets and liabilities reflect the net tax effects of the tax credits and net operating loss carryforwards and the temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The ultimate realization of the net deferred tax assets is dependent upon the generation of sufficient future taxable income in the applicable tax jurisdictions. Based on the magnitude of the deferred tax assets at December 31, 2015 and 2014 and the level of historical U.S. tax losses, management has determined that the uncertainty regarding the realization of these assets warranted a significant valuation allowance at December 31, 2015 and 2014.

For U.S. federal and state income tax purposes at December 31, 2015, the Company had tax credit carryforwards of \$53.1 million, which will expire between 2016 and 2035, and net operating loss carryforwards of \$745.6 million, which will expire between 2019 and 2035. The federal net operating loss and tax credit amounts are subject to annual limitations under Section 382 change of ownership rules of the Internal Revenue Code. The Company completed an assessment at March 31, 2015 regarding whether there may have been a Section 382 ownership change and concluded that it is more likely than not that none of the Company's net operating loss and tax credit amounts are subject to any Section 382 limitation.

Additionally, the Company has foreign net operating loss carryforwards of \$33.8 million and tax credit carryforwards of \$3.7 million that begin to expire in 2029. The Company has determined there is uncertainty regarding the realization of a portion of these assets and has recorded a valuation allowance against \$23.1 million of net operating losses and \$3.7 million of tax credits at December 31, 2015.

The Company's assessment of the valuation allowance on the U.S. and foreign deferred tax assets could change in the future based on its levels of pre-tax income and other tax related adjustments. Removal of the valuation allowance in whole or in part would result in a non-cash reduction in income tax expense during the period of removal.

Excluded from the above deferred tax schedule at December 31, 2015 are tax assets totaling \$33.7 million resulting from the exercise of employee stock options, because recognition of these assets will occur upon utilization of these deferred tax assets to reduce taxes payable and will result in a credit to additional paid-in capital within stockholders' equity rather than the provision for income taxes.

The following table sets forth a reconciliation of the Company's income tax provision (benefit) to the statutory U.S. federal tax amount for the years ended December 31, 2015, 2014 and 2013:

	Year Ended December 31,		
	2015	2014	2013
Statutory tax	\$ 198	\$ 5,921	\$ 8,432
Tax credits	(2,972)	(1,589)	(1,482)
Foreign operations	(4,055)	(6,047)	(10,542)
Non-deductible expenses and other	2,303	771	516
Federal benefit related to Note issuance	(6,493)	—	—
Increase in valuation allowance	9,104	3,132	6,015
(Benefit) provision for income taxes	<u>\$ (1,915)</u>	<u>\$ 2,188</u>	<u>\$ 2,939</u>

The cumulative amount of undistributed earnings of foreign subsidiaries, which is intended to be indefinitely reinvested and for which U.S. income taxes have not been provided, totaled \$38.5 million at December 31, 2015. The Company does not have any plans to repatriate these earnings because the underlying cash will be used to fund the ongoing operations of the foreign subsidiaries. The additional taxes that might be payable upon repatriation of foreign earnings are not significant.

A tax position must be more likely than not to be sustained before being recognized in the financial statements. It also requires the accrual of interest and penalties as applicable on unrecognized tax positions. The Company is disclosing unrecognized tax benefits primarily related to the foreign tax implications arising from the changes in revenue recognition that arose in periods prior to 2012. The unrecognized tax benefits did not have an impact on the effective tax rate because the Company maintains a full valuation allowance on the related loss carryforwards. At December 31, 2013, the Company's unrecognized tax benefits and related accrued interest and penalties totaled \$24.7 million, of which \$0.8 million would affect the Company's income tax provision and effective tax rate if recognized. At December 31, 2014, the Company's unrecognized tax benefits and related accrued interest and penalties totaled \$25.8 million, of which \$0.8 million would affect the Company's effective tax rate if recognized. At December 31, 2015, the Company's unrecognized tax benefits and related accrued interest and penalties totaled \$26.0 million, of which \$3.2 million would affect the Company's income tax provision and effective tax rate if recognized.

The following table sets forth a reconciliation of the beginning and ending amounts of unrecognized tax benefits, excluding the impact of interest and penalties, for the years ended December 31, 2015, 2014 and 2013 (in thousands):

Unrecognized tax benefits at January 1, 2013	\$ 22,629
Increases for tax positions taken during a prior period	2,205
Decreases related to the lapse of applicable statutes of limitations	(105)
Unrecognized tax benefits at December 31, 2013	<u>24,729</u>
Increases for tax positions taken during a prior period	1,118
Unrecognized tax benefits at December 31, 2014	<u>25,847</u>
Increases for tax positions taken during a prior period	148
Unrecognized tax benefits at December 31, 2015	<u>\$ 25,995</u>

The Company recognizes interest and penalties related to uncertain tax positions in income tax expense. Accrued interest and penalties related to uncertain tax positions at December 31, 2015 and 2014 were not material.

The tax years 2008 through 2015 remain open to examination by taxing authorities in the jurisdictions in which the Company operates. The most significant operating jurisdictions include: the United States, Ireland, the Netherlands, Germany, Israel, Japan, and the United Kingdom.

## **P. RESTRUCTURING COSTS AND ACCRUALS**

### ***2016 Restructuring Plan***

In the first quarter of 2016, the Company commenced restructuring actions that are part of a broad restructuring plan encompassing a series of measures intended to allow the Company to more efficiently operate in a leaner, and more directed cost structure. These include reductions in the Company's workforce, facilities consolidation, transferring certain business processes to lower cost regions, and reducing other third-party services costs. In connection with this restructuring plan, the Company expects to incur incremental cash expenditures of approximately \$25 million relating to termination benefits, facility costs, employee overlap expenses and related actions. The Company expects approximately \$14 million of the expenditures will be recorded as restructuring expenses in the quarters ending December 31, 2015 through June 30, 2017. The Company anticipates that the restructuring plan will be substantially complete by the end of the second quarter of 2017 and will result in annualized costs savings of appropriately \$68 million.

The restructuring charges of \$5.8 million recorded during the quarter ended December 31, 2015, represented an initial elimination of 111 positions worldwide during January and February of 2016.

### ***2013 Restructuring Actions***

In June 2013, the Company's leadership evaluated the marketing and selling teams and, in an effort to better align sales resources with the Company's strategic goals and enhance its global account team approach, eliminated 31 positions. As a result, the Company recognized related restructuring costs of \$1.7 million in 2013.

During November and December 2013, the Company's executive management team identified opportunities to lower costs in the supply and hardware technology group by eliminating 29 positions in hardware shared services and 15 positions in the supply and technology group. Additionally, an engineering reorganization at the same time resulted in the elimination of four engineering positions. As a result, the Company recognized \$1.7 million of related restructuring costs in 2013.

All of the restructuring costs related to 2013 restructuring actions were fully paid as of December 31, 2015, no further actions are anticipated.

### ***2012 Restructuring Plan***

In June 2012, the Company committed to a series of strategic actions (the "2012 Plan") to focus on its Broadcast and Media market and Video and Audio Post and Professional market and to drive improved operating performance. These actions included the divestiture of certain of the Company's consumer-focused product lines, a rationalization of the business operations and a reduction in force. Actions under the plan included the elimination of approximately 280 positions in June 2012, the abandonment of one of the Company's facilities in Burlington, Massachusetts and the partial abandonment of facilities in Mountain View and Daly City, California, in September 2012, and the partial abandonment of the facility in Pinewood, UK, in December 2012. During 2012, the Company recorded restructuring charges of \$13.9 million related to severance costs and \$8.6 million for the closure or partial closure of facilities, which included non-cash amounts of \$1.4 million for fixed asset write-offs and \$1.0 million for deferred rent liability write-offs during 2012.

During 2013, the Company recorded \$0.1 million in additional severance costs and revisions totaling \$1.8 million resulting from sublease assumption changes and other costs related to the abandoned facilities under the 2012 Plan. The Company substantially completed all actions under the 2012 Plan prior to December 31, 2012.

In June 2014, the Company signed an agreement for surrender of the partially abandoned property at Pinewood, UK. As a result, the Company recorded a recovery of \$0.2 million, as the Company was released from all obligations related to the surrendered property.

In June 2015, the Company recorded a revision of restructuring costs of \$0.5 million resulting from an update to the sublease assumption related to the Company's Mountain View, California facility that was partially abandoned in 2012.

No further actions are anticipated under the 2012 restructuring plans.

### **Prior Years' Restructuring Plans**

The remaining accrual balance of \$0.3 million at December 31, 2015 was related to the closure of part of the Company's Dublin, Ireland facility under the 2008 Plan. No further actions are anticipated under the prior years' restructuring plans.

### **Restructuring Summary**

The following table sets forth the activity in the restructuring accruals for the years ended December 31, 2015, 2014 and 2013 (in thousands):

	<b>Employee- Related</b>	<b>Facilities- Related &amp; Other</b>	<b>Total</b>
Accrual balance at January 1, 2013	\$ 4,298	\$ 11,433	\$ 15,731
New restructuring charges – operating expenses	3,539	—	3,539
Revisions of estimated liabilities	50	1,781	1,831
Accretion	—	612	612
Cash payments	(5,469)	(7,736)	(13,205)
Foreign exchange impact on ending balance	(19)	12	(7)
Accrual balance at December 31, 2013	2,399	6,102	8,501
New restructuring charges – operating expenses	—	—	—
Revisions of estimated liabilities	—	(165)	(165)
Accretion	—	565	565
Cash payments	(2,340)	(4,172)	(6,512)
Foreign exchange impact on ending balance	(1)	(45)	(46)
Accrual balance at December 31, 2014	58	2,285	2,343
New restructuring charges – operating expenses	5,766	—	5,766
Revisions of estimated liabilities	—	539	539
Accretion	—	226	226
Cash payments	(315)	(1,301)	(1,616)
Foreign exchange impact on ending balance	—	(78)	(78)
Accrual balance at December 31, 2015	<u>\$ 5,509</u>	<u>\$ 1,671</u>	<u>\$ 7,180</u>

The employee-related accruals at December 31, 2015 and 2014 represent severance costs to former employees that will be paid out within twelve months, and are, therefore, included in the caption "accrued expenses and other current liabilities" in the Company's consolidated balance sheets.

The facilities-related and other accruals at December 31, 2015 and 2014 represent contractual lease payments, net of estimated sublease income, on space vacated as part of the Company's restructuring actions. The leases, and payments against the amounts accrued, extend through 2021 unless the Company is able to negotiate earlier terminations. Of the total facilities-related accruals, \$1.0 million was included in the caption "accrued expenses and other current liabilities" and \$0.6 million was included in the caption "other long-term liabilities" in the Company's consolidated balance sheet at December 31, 2015. At December 31, 2014, \$1.0 million was included in the caption "accrued expenses and other current liabilities" and \$1.3 million was included in the caption "other long-term liabilities."

## Q. PRODUCT AND GEOGRAPHIC INFORMATION

The Company provides digital media content-creation, management and distribution products and solutions for film, video, audio and broadcast professionals, as well as artists and musicians, which the Company classifies as two types, video and audio. The Company also classifies all its maintenance, professional services and training revenues as services revenues. Operating segments are defined as components of an enterprise about which separate financial information is available that is evaluated regularly by the chief operating decision maker in deciding how to allocate resources and in assessing performance. The Company's evaluation of the discrete financial information that is regularly reviewed by the chief operating decision makers determined that in 2015, 2014 and 2013 the Company had only one operating segment. Specifically, the Company does not internally measure profitability based upon video, audio, or service revenue.

The Company's video products and solutions are designed to improve the productivity of video and film editors and broadcasters by enabling them to edit video, film and sound; manage media assets; and automate workflows. Professional video creative software and hardware products include the Media Composer product line used to edit film, television programmings, news broadcasts, commercials and other video content. Video products also include Avid ISIS shared storage systems and Avid Interplay asset management solutions that provide complete network, storage and database solutions to enable users to simultaneously share and manage media assets throughout a project or organization.

The Company's audio products and solutions include digital audio software and workstation solutions, control surfaces, live sound systems and notation software that provide music creation; audio recording, editing, and mixing; and live performance solutions. Audio products include Pro Tools digital audio software and workstation solutions to facilitate the audio production process, including music and sound creation, recording, editing, signal processing, integrated surround mixing and mastering, and reference video playback. Audio products also include a range of complementary control surfaces and consoles, including the System 5 and System 6 modular consoles, as well as the VENUE live-sound systems and Sibelius-branded notation software.

The Company's services revenues are primarily derived from the sale of maintenance contracts and professional service and the recognition of revenues for Implied Maintenance Release PCS. The Company provides online and telephone support and access to software upgrades for customers whose products are under warranty or covered by a maintenance contract. The Company's professional services team provides installation, integration, planning, consulting and training services.

The following is a summary of the Company's revenues by type for the years ended December 31, 2015, 2014 and 2013 (in thousands):

	Year Ended December 31,		
	2015	2014	2013
Video products and solutions	\$ 201,559	\$ 233,464	\$ 243,173
Audio products and solutions	134,812	145,163	152,358
Total products and solutions	336,371	378,627	395,531
Services	169,224	151,624	167,881
Total net revenues	\$ 505,595	\$ 530,251	\$ 563,412

The following table sets forth the Company's revenues from by geographic region for the years ended December 31, 2015, 2014 and 2013 (in thousands):

	Year Ended December 31,		
	2015	2014	2013
Revenues:			
United States	\$ 185,109	\$ 193,060	\$ 218,154
Other Americas	37,081	45,342	43,131
Europe, Middle East and Africa	206,192	217,767	214,441
Asia-Pacific	77,213	74,082	87,686
Total net revenues	\$ 505,595	\$ 530,251	\$ 563,412

The following table presents the Company's long-lived assets, excluding intangible assets, by geography at December 31, 2015 and 2014 (in thousands):

	December 31,	
	2015	2014
Long-lived assets:		
United States	\$ 30,684	\$ 30,465
Other countries	11,920	3,945
Total long-lived assets	<u>\$ 42,604</u>	<u>\$ 34,410</u>

## R. LONG TERM DEBT AND CREDIT AGREEMENT

### *2.00% Convertible Senior Notes due 2020*

On June 15, 2015, the Company issued \$125.0 million aggregate principal amount of its 2.00% Convertible Senior Notes due 2020 (the "Notes") in an offering conducted in accordance with Rule 144A under the Securities Act of 1933. The net proceeds from the offering were \$120.3 million after deducting the offering expenses.

The Notes pay interest semi-annually on June 15 and December 15 of each year, beginning on December 15, 2015, at an annual rate of 2.00% and mature on June 15, 2020 unless earlier converted or repurchased in accordance with their terms prior to such date. Additional interest may be payable upon the occurrence of certain event of default relating to the Company's failure to deliver certain documents or reports to the Trustee, the Company's failure to timely file any document or report required pursuant to Section 13 or 15(d) of the Exchange Act or if the Notes are not freely tradable as of one year after the last date of original issuance of the Notes. The Notes are convertible into cash, shares of the Company's common stock or a combination of cash and shares of common stock, at the Company's election, based on an initial conversion rate, subject to adjustment, of 45.5840 shares per \$1,000 principal amount of Notes, which is equal to an initial conversion price of \$21.94 per share. Prior to December 15, 2019, the Notes are convertible only in the following circumstances: (1) during any calendar quarter commencing after September 30, 2015, if the last reported sale price of the Company's common stock is greater than or equal to 130% of the applicable conversion price for at least 20 trading days during a period of 30 consecutive trading days ending on the last trading day of the preceding calendar quarter; (2) during the five business day period after any five consecutive trading day period (the "Measurement Period") in which the trading price per \$1,000 principal amount of Notes for each trading day in the Measurement Period was less than 98% of the product of the last reported sale price of the Company's common stock and the conversion rate on such trading day; or (3) upon the occurrence of specified corporate transactions. On or after December 15, 2019 until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert their Notes at any time, regardless of the foregoing circumstances. The Company may not redeem the Notes prior to their maturity, which means that the Company is not required to redeem or retire the Notes periodically.

The Notes are senior unsecured obligations. Upon the occurrence of certain specified fundamental changes, the holders may require the Company to repurchase all or a portion of the Notes for cash at 100% of the principal amount of the Notes being purchased, plus any accrued and unpaid interest.

In accounting for the Notes at issuance, the Company allocated proceeds from the Notes into debt and equity components according to the accounting standards for convertible debt instruments that may be fully or partially settled in cash upon conversion. The initial carrying amount of the debt component, which approximates its fair value, was estimated by using an interest rate for nonconvertible debt, with terms similar to the Notes. The excess of the principal amount of the Notes over the fair value of the debt component was recorded as a debt discount and a corresponding increase in additional paid-in capital. The debt discount is accreted to the carrying value of the Notes over their term as interest expense using the interest method. Upon issuance of the Notes, the Company recorded \$96.7 million as debt and \$28.3 million as additional paid-in capital in stockholders' equity. The effective interest rate used to estimate the fair value of the debt was 7.66%. The Company recorded \$2.9 million debt discount accretion as interest expenses in the Company's statement of operations for the year ended December 31, 2015. Total interest expense for the year ended December 31, 2015 was \$4.3 million, reflecting the coupon and accretion of the discount.

In connection with the issuance of the Notes, the Company recorded an income tax benefit of \$6.5 million as a discrete item for the year ended December 31, 2015 as a result of the creation of a deferred tax liability associated with the portion of the Notes that was classified within stockholders' equity. While GAAP requires the offset of the deferred tax liability to be recorded in additional paid-in

capital, consistent with the equity portion of the Notes, the creation of the deferred tax liability produced evidence of recoverability of deferred tax assets, which resulted in the release of a valuation allowance, totaling \$6.5 million, reflected as an income tax benefit in the current period.

The Company incurred transaction costs of \$4.7 million relating to the issuance of the Notes. The Company adopted *ASU No. 2015-03, Simplifying the Presentation of Debt Issuance Costs*, which requires that debt issuance costs be classified as a reduction in the carrying value of the debt. In accounting for these costs, the Company allocated the costs of the offering between debt and equity in proportion to the fair value of the debt and equity recognized. The transaction costs allocated to the debt component of approximately \$3.6 million were recorded as a direct deduction from the face amount of the Notes and are being amortized as interest expense over the term of the Notes using the interest method. The transaction costs allocated to the equity component of approximately \$1.1 million were recorded as a decrease in additional paid-in capital.

The net carrying amount of the liability component of the Notes consisted of the following at December 31, 2015 (in thousands):

	<b>December 31, 2015</b>
Principal amount of Notes	\$ 125,000
Original debt discount due to:	
Allocation of proceeds to equity	(28,299)
Allocation of issuance costs to debt	(3,641)
Accumulated accretion	2,890
Net carrying value	<u>\$ 95,950</u>

### ***Capped Call Transaction***

In connection with the offering of the Notes, on June 9, 2015, the Company entered into a capped call derivative transaction with a third party (the “Capped Call”). The Capped Call is expected generally to reduce the potential dilution to the common stock and/or offset any cash payments the Company may be required to make in excess of the principal amount upon conversion of the Notes in the event that the market price per share of the common stock is greater than the strike price of the Capped Call. The Capped Call has a strike price of \$21.94 and a cap price of \$26.00 and is exercisable by the Company when and if the Notes are converted. If, upon conversion of the Notes, the price of the Company’s common stock is above the strike price of the Capped Call, the counterparty will deliver shares of common stock and/or cash with an aggregate value approximately equal to the difference between the price of the common stock at the conversion date (as defined, with a maximum price for purposes of this calculation equal to the cap price) and the strike price, multiplied by the number of shares of common stock related to the portion of the Capped Call being exercised. The Capped Call expires on June 15, 2020. The Company paid \$10.1 million for the Capped Call and recorded the payment as a decrease to additional paid-in capital.

### ***Credit Facilities***

On February 26, 2016, the Company entered into a Financing Agreement (the “Financing Agreement”) with Cerberus Business Finance, LLC, as collateral and administrative agent, and the lenders party thereto (the “Lenders”). Pursuant to the Financing Agreement, the Lenders agreed to provide the Company with (a) a term loan in the aggregate principal amount of \$100 million (the “Term Loan”) and (b) a revolving credit facility (the “Credit Facility”) of up to a maximum of \$5 million in borrowings outstanding at any time. All outstanding loans under the Financing Agreement will become due and payable, on the earlier of February 26, 2021 and the date that is 30 days prior to June 15, 2020, the scheduled maturity date of the Notes. The Company borrowed the full amount of the Term Loan, or \$100 million, as of the Closing Date, but did not borrow any amount under the Credit Facility as of the Closing Date.

Concurrently with the entry into the Financing Agreement, on February 26, 2016 the Company terminated its existing Credit Agreement, dated June 22, 2015, among the Company and certain of its subsidiaries, as borrowers, KeyBank National Association, as Administrative Agent and the other lender parties thereto, and repaid all outstanding borrowings under such agreement. There were no penalties paid by the Company in connection with this termination.

Interest accrues on outstanding borrowings under the Credit Facility and the Term Loan at a rate of either the LIBOR Rate (as defined in the Financing Agreement) plus 6.75% or a Reference Rate (as defined in the Financing Agreement) plus 5.75%, at the option of the Company. The Company must also pay to the Lenders, on a monthly basis, an unused line fee at a rate of 0.5% per annum. The

Company may prepay all or any portion of the Term Loan prior to its stated maturity, subject to the payment of certain fees based on the amount repaid. The Term Loan requires quarterly principal payments of \$1.25 million commencing in June 2016. The Term Loan also requires the Company to use excess cash, as defined in the Financing Agreement, to repay outstanding principal.

The Company granted a security interest on substantially all of their assets to secure the obligations under the Credit Facility and the Term Loan.

The Financing Agreement contains customary representations and warranties, covenants, mandatory prepayments, and events of default under which the Company's payment obligations may be accelerated. The Financing Agreement includes covenants requiring the Company to maintain a Leverage Ratio (defined as the ratio of (a) consolidated total funded indebtedness to (b) consolidated Adjusted EBITDA) of no greater than 4.35:1.00 for the four quarters ending June 30, 2016, 5.40:1.00 for the four quarters ending September 30, 2016, 4.20:1.00 for the four quarters ending December 31, 2016 and thereafter declining over time from 3.50:1.00 to 2.50:1.00. The Financing Agreement also restricts the Company from making capital expenditures in excess of \$20,000,000 in any fiscal year.

The Financing Agreement contains restrictive covenants that are customary for an agreement of this kind, including, for example, covenants that restrict the Company from incurring additional indebtedness, granting liens, making investments and restricted payments, making acquisitions, paying dividends and engaging in transactions with affiliates.

## S. QUARTERLY RESULTS (UNAUDITED)

The following information has been derived from unaudited consolidated financial statements that, in the opinion of management, include all normal recurring adjustments necessary for a fair presentation of such information.

(In thousands, except per share data)	Quarter Ended							
	2015				2014			
	Dec. 31	Sept. 30	June 30	Mar. 31	Dec. 31	Sept. 30	June 30	Mar. 31
Net revenues	\$ 138,806	\$ 137,436	\$ 109,767	\$ 119,586	\$ 128,196	\$ 142,429	\$ 124,644	\$ 134,982
Cost of revenues	54,912	47,672	43,306	47,492	50,548	52,788	50,420	50,665
Amortization of intangible assets	1,950	1,950	163	—	—	—	—	50
<b>Gross profit</b>	81,944	87,814	66,298	72,094	77,648	89,641	74,224	84,267
Operating expenses:								
Research and development	24,190	25,225	23,310	23,173	23,212	22,154	22,070	22,954
Marketing and selling	30,091	31,564	32,811	28,045	34,527	31,410	34,297	32,815
General and administrative	21,463	15,834	17,425	19,387	22,222	20,644	19,984	18,331
Amortization of intangible assets	786	786	408	374	375	373	398	480
Restructuring costs (recoveries), net	5,766	—	539	—	—	—	(165)	—
Total operating expenses	82,296	73,409	74,493	70,979	80,336	74,581	76,584	74,580
<b>Operating (loss) income</b>	(352)	14,405	(8,195)	1,115	(2,688)	15,060	(2,360)	9,687
Other expense, net	(1,727)	(2,519)	(1,439)	(723)	(1,620)	(455)	(357)	(351)
<b>(Loss) income before income taxes</b>	(2,079)	11,886	(9,634)	392	(4,308)	14,605	(2,717)	9,336
Provision for (benefit from) income taxes	2,306	768	(5,550)	561	761	365	622	440
<b>Net (loss) income</b>	\$ (4,385)	\$ 11,118	\$ (4,084)	\$ (169)	\$ (5,069)	\$ 14,240	\$ (3,339)	\$ 8,896
<b>Net (loss) income per share – basic and diluted</b>	\$ (0.11)	\$ 0.28	\$ (0.10)	\$ 0.00	\$ (0.13)	\$ 0.36	\$ (0.09)	\$ 0.23
Weighted-average common shares outstanding – basic	39,439	39,231	39,635	39,387	39,234	39,133	39,119	39,099
Weighted-average common shares outstanding – diluted	39,439	39,750	39,635	39,387	39,234	39,201	39,119	39,122

## ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

Not applicable.

## ITEM 9A. CONTROLS AND PROCEDURES

### *Evaluation of Disclosure Controls and Procedures*

Our management, with the participation and supervision of our Chief Executive Officer and Chief Financial Officer, is responsible for our disclosure controls and procedures pursuant to Rules 13a-15(e) and 15d-15(e) under the Exchange Act. Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified under SEC rules and forms. Disclosure controls and procedures include controls and procedures designed to ensure that information required to be disclosed in our reports filed under the Exchange Act is accumulated and communicated to our principal executive officer and our principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

Our management, including the Chief Executive Officer and the Chief Financial Officer, carried out an evaluation of the effectiveness of our disclosure controls and procedures as of December 31, 2015. Based on this evaluation, our management concluded that as of December 31, 2015 these disclosure controls and procedures were not effective at the reasonable assurance level as a result of the material weaknesses in our internal control over financial reporting, which are described below. As discussed below, our internal control over financial reporting is an integral part of our disclosure controls and procedures.

### *Management's Annual Report on Internal Control over Financial Reporting*

Our management is responsible for establishing and maintaining adequate internal control over our financial reporting, as defined in Rule 13a-15(f) under the Exchange Act. Internal control over financial reporting is a process designed by, or under the supervision of, our principal executive and principal financial officers, or persons performing similar functions, and effected by our board of directors, management, and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America ("GAAP") and includes those policies and procedures that:

- (1) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of our assets;
- (2) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and
- (3) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements.

Because of inherent limitations, no matter how well designed and operated, internal control over financial reporting may not prevent or detect misstatements and can only provide reasonable assurance of achieving the desired control objectives. In addition, the design of internal control over financial reporting must reflect the fact that there are resource constraints and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Our Chief Executive Officer and Chief Financial Officer have performed an evaluation of our internal control over financial reporting under the framework in *Internal Control-Integrated Framework (2013)*, issued by the Committee of Sponsoring Organizations of the Treadway Commission. The objective of this assessment was to determine whether our internal control over financial reporting was effective at December 31, 2015. Based on the results of this evaluation, we have concluded that our internal control over financial reporting was not effective at December 31, 2015 due to an ineffective control environment,

ineffective control activities, ineffective information and communications controls, and ineffective monitoring controls. We believe these deficiencies are material weaknesses.

A material weakness is a deficiency, or combination of deficiencies in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim consolidated financial statements will not be prevented or detected on a timely basis.

Our independent registered public accounting firm, Deloitte & Touche LLP, has audited our consolidated financial statements and has issued an attestation report on our internal control over financial reporting as of December 31, 2015, which report is included herein.

### ***Material Weakness Discussion and Remediation***

In September 2014, we completed a complex restatement of our financial statements, where we corrected errors in revenue recognition impacting millions of customer transactions for interim and annual periods from January 1, 2005 to September 30, 2012. For the year ended December 31, 2014, we concluded that the circumstances that allowed the errors in the misapplication of GAAP in revenue recognition and other financial statement balances to go undetected for an extended period of time, which necessitated the restatement of historical financial statements, were indicative of several control deficiencies, including:

- **Risk Assessment** - We did not have an effective risk assessment process. From a governance perspective, we historically did not have a formal process to identify, update and assess risks, including changes in our business practices, that could significantly impact our consolidated financial statements as well as the system of internal control over financial reporting.
- **Control Environment** - We did not maintain an effective control environment, which is the foundation for the discipline and structure necessary for effective internal control over financial reporting, as evidenced by: (i) an insufficient number of personnel appropriately qualified to perform control monitoring activities, including the recognition of the risks and complexities of our transactions and business operations, (ii) an insufficient number of personnel with an appropriate level of GAAP knowledge and experience or ongoing training in the application of GAAP commensurate with our financial reporting requirements, which resulted in erroneous judgments regarding the proper application of GAAP, and (iii) insufficient corporate involvement to adequately exercise appropriate oversight of accounting judgments and estimates.
- **Control Activities** - We did not have control activities that were designed and operating effectively, including controls over the inputs inherent in the Company's revenue recognition models. Control activities that were historically in place (i) did not always address relevant risks, (ii) were sometimes performed with incomplete information and (iii) were not performed on all relevant transactions. In addition, the level of precision of the management review controls was not sufficient to identify all potential errors.
- **Information and Communications** - We did not implement appropriate information technology controls related to change management and access for certain information systems that are relevant to the preparation of the consolidated financial statements and our system of internal control over financial reporting. As a result of the material weaknesses identified, there is a possibility that the effectiveness of business process controls, which are dependent on the affected information systems or electronic data and financial reports generated from the affected information systems, may be adversely affected.
- **Monitoring Activities** - We did not maintain effective monitoring of controls related to the financial close and reporting process.

During the year ended December 31, 2015, we have designed and implemented effective risk assessment controls to remediate the deficiencies in our risk assessment process.

With respect to the control environment deficiency, we believe we have made progress in changes to our staffing levels and skills in place to (i) identify and address risks and judgmental accounting matters, (ii) ensure appropriate application of GAAP and (iii) perform appropriate oversight and monitoring activities. In light of the magnitude of the restatement and the significant changes

to processes experienced in 2015, we do not believe the enhancements in our control environment have been in place for a sufficient period of time to allow us to conclude that the control environment is effective as of December 31, 2015.

For the deficiency on control activities, with the assistance of our internal audit department that we have outsourced to a big four accounting firm, we have completed a design assessment of all transaction cycles, identified gaps in control design and have formulated a remediation plan to address each gap noted, however, we have not yet implemented all new controls needed to address design gaps and, for those controls that have been implemented, we have not been able to evidence that controls were operating for a sufficient period of time to allow us to conclude that they are effective.

For the information systems deficiency, and in particular information systems that relate to revenue recognition, being mindful of the new revenue recognition standard that will have a pervasive impact on our revenue recognition models, we are in the process of completing a sustainable design of controls that strikes a balance between processes and systems necessary for the current revenue recognition models and those that will be required prospectively. As these activities were still in process as of December 31, 2015, the deficiency noted above related to information and communication systems continues to exist as of December 31, 2015.

Lastly, the deficiency related to monitoring continues to exist at December 31, 2015. We believe that remediation of the deficiencies in the control environment, control activities and information systems is necessary before an appropriate monitoring program can be effectively implemented.

Between September 2014 and May 2015, as we completed the restatement of our historical financial statements and regained our status as a current filer with the SEC, we filed two Annual Reports on Form 10-K and four Quarterly Reports on Form 10-Q, covering over 10 years of financial data in this eight month period. Due to the compressed timeframe of these filings and significant level of effort devoted to completing the restatement and getting caught up on filings, we did not have sufficient time during the remainder of 2015 to fully remediate the aforementioned deficiencies and demonstrate that new and enhanced controls were operating for a sufficient period of time to conclude they were effective. As a result, certain control deficiencies described herein continued to exist as of December 31, 2015. We believe the control deficiencies described herein, individually and when aggregated, represent material weaknesses in our internal control over financial reporting at December 31, 2015 since such deficiencies result in a reasonable possibility that a material misstatement in our annual or interim consolidated financial statements may not be prevented or detected on a timely basis by our internal controls. As a result of our assessment, we have therefore concluded that our internal control over financial reporting was not effective at December 31, 2015.

To address the material weaknesses discussed above, management intends to finalize its efforts around implementing effective internal controls and closely test and monitor the operating effectiveness of these controls throughout 2016 to ensure they meet their designed control objectives and, where necessary, take additional corrective measures to ensure that deficiencies are remediated. With respect to controls over information systems that relate to revenue recognition, we are in the process of working with software vendors and third-party consultants to design appropriate automated controls over revenue recognition. Due to the complexity of our revenue recognition models and the volume of transactions we apply them to, we utilize a highly customized revenue recognition system to calculate revenue recognition in accordance with GAAP. As our system is highly customized and not an established, mature system, implementing systematic automated controls requires significant time and investment. In addition, with the issuance of *ASU 2014-09, Revenue From Contracts With Customers*, that we could adopt as early as January 1, 2017, which supersedes nearly all existing revenue recognition guidance, additional changes to our customized software solution and the processes that surround it will be necessary to comply with the new accounting standards. We plan to continue to implement automated controls and processes in 2016 that address both current and prospective GAAP requirements.

The management team was able to obtain a reasonable level of assurance that revenue recognition and other financial statement balances were accurate and complete through highly substantive validation procedures and review processes. As a result of these procedures, we believe that the consolidated financial statements included in this Annual Report on Form 10-K for the year ended December 31, 2015 fairly present, in all material respects, our financial position, results of operations and cash flows for the periods presented in conformity with GAAP.

We believe that the remediation measures described above will strengthen our internal control over financial reporting and remediate the material weaknesses we have identified. We expect that our remediation efforts, including design, implementation and testing will continue throughout fiscal year 2016.

### ***Changes in Internal Control over Financial Reporting***

As described above under “Material Weakness Discussion and Remediation,” we have undertaken a broad range of remedial actions to address the material weaknesses in our internal control over financial reporting, including changes in staffing, as well as design and implementation of new controls. These remedial procedures continued throughout the quarter ended December 31, 2015.

### ***Inherent Limitation on the Effectiveness of Internal Controls***

The effectiveness of any system of internal control over financial reporting is subject to inherent limitations, including the exercise of judgment in designing, implementing, operating, and evaluating the controls and procedures, and the inability to eliminate misconduct completely. Accordingly, any system of internal control over financial reporting can only provide reasonable, not absolute, assurances. In addition, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. We intend to continue to monitor and upgrade our internal controls as necessary or appropriate for our business, but cannot assure that such improvements will be sufficient to provide us with effective internal control over financial reporting.

### **REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors and Stockholders of  
Avid Technology, Inc.  
Burlington, Massachusetts

We have audited the internal control over financial reporting of Avid Technology, Inc. and subsidiaries (the “Company”) as of December 31, 2015, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying management's annual report on internal control over financial reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

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

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

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. The following material weaknesses have been identified and included in management's assessment: an ineffective control environment, ineffective control activities, ineffective information and communications controls, and ineffective monitoring controls. These material weaknesses were considered in determining the nature, timing, and extent of audit tests applied in our audit of the Company's consolidated financial statements as of and for the year ended December 31, 2015 and this report does not affect our report on such financial statements.

In our opinion, because of the effect of the material weaknesses identified above on the achievement of the objectives of the control criteria, the Company has not maintained effective internal control over financial reporting as of December 31, 2015, based on the criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's consolidated financial statements as of and for the year ended December 31, 2015, and our report dated March 15, 2016 expressed an unqualified opinion on those financial statements.

**/s/ Deloitte & Touche LLP**

Boston, Massachusetts  
March 15, 2016

**ITEM 9B. OTHER INFORMATION**

Not Applicable.

## PART III

### ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

We have adopted a Code of Business Conduct and Ethics applicable to all our employees, including our principal executive officer, principal financial officer and principal accounting officer. We will provide any person, without charge, with a copy of our Code of Business Conduct and Ethics upon written request to Avid, 75 Network Drive, Burlington, MA 01803, Attention: Corporate Secretary. Our Code of Business Conduct and Ethics is also available in the Investor Relations section of our website at [www.avid.com](http://www.avid.com). If we were to amend or waive any provision of our Code of Business Conduct and Ethics applicable to any of our principal executive officers, our principal financial officer, our principal accounting officer or any person performing similar functions, we intend to satisfy our disclosure obligations with respect to any such waiver or amendment by posting such information on our Internet website set forth above rather than by filing a Form 8-K.

The remainder of the response to this item will be contained in our Proxy Statement for our 2016 Annual Meeting of Stockholders, or the 2016 Proxy Statement, under the captions “Directors,” “Executive Officers,” “Section 16(a) Beneficial Ownership Reporting Compliance,” “Board Committees” and “Director Nomination Process,” all of which is incorporated herein by reference.

### ITEM 11. EXECUTIVE COMPENSATION

The response to this item will be contained in our 2016 Proxy Statement under the captions “Director Compensation,” “Executive Compensation,” “Compensation Committee Report” and “Compensation Committee Interlocks and Insider Participation” and is incorporated herein by reference.

### ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The response to this item will be contained in our 2016 Proxy Statement under the caption “Security Ownership of Certain Beneficial Owners and Management” and is incorporated herein by reference.

The disclosures required for securities authorized for issuance under equity compensation plans will be contained in the 2016 Proxy Statement under the caption “Equity Compensation Plan Information” and are incorporated herein by reference.

### ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The response to this item will be contained in our 2016 Proxy Statement under the captions “Board Committees” and “Related Person Transaction Policy” and is incorporated herein by reference.

### ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The response to this item will be contained in our 2016 Proxy Statement under the caption “Independent Registered Public Accounting Firm Fees” and is incorporated herein by reference.

## PART IV

### ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

#### (a) 1. FINANCIAL STATEMENTS

The following consolidated financial statements are included in Item 8:

- Report of Independent Registered Public Accounting Firm
- Consolidated Statements of Operations for the years ended December 31, 2015, 2014 and 2013
- Consolidated Statements of Comprehensive Income for the years ended December 31, 2015, 2014 and 2013
- Consolidated Balance Sheets as of December 31, 2015 and 2014
- Consolidated Statements of Stockholders' Deficit for the years ended December 31, 2015, 2014 and 2013
- Consolidated Statements of Cash Flows for the years ended December 31, 2015, 2014 and 2013
- Notes to Consolidated Financial Statements

- (a) 3. LISTING OF EXHIBITS. The list of exhibits, which are filed or furnished with this report or are incorporated herein by reference, is set forth in the Exhibit Index immediately preceding the exhibits and is incorporated herein by reference.

**SIGNATURES**

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

AVID TECHNOLOGY, INC.  
(Registrant)

By: /s/ Louis Hernandez, Jr.  
Louis Hernandez, Jr.  
Chairman, Chief Executive Officer and President  
(Principal Executive Officer)

Date: March 15, 2016

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

By: /s/ Louis Hernandez, Jr.  
Louis Hernandez, Jr.  
Chairman, Chief Executive Officer and President  
(Principal Executive Officer)

By: /s/ John W. Frederick  
John W. Frederick  
Executive Vice President, Chief Financial Officer and Chief Administrative Officer  
(Principal Financial Officer)

By: /s/ Ryan H. Murray  
Ryan H. Murray  
Vice President of Finance and Chief Accounting Officer  
(Principal Accounting Officer)

Date: March 15, 2016

Date: March 15, 2016

Date: March 15, 2016

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

<u>NAME</u>	<u>TITLE</u>	<u>DATE</u>
<u>/s/ Louis Hernandez, Jr.</u> Louis Hernandez, Jr.	Chairman of the Board of Directors	March 15, 2016
<u>/s/ Nancy Hawthorne</u> Nancy Hawthorne	Lead Director	March 15, 2016
<u>/s/ Robert M. Bakish</u> Robert M. Bakish	Director	March 15, 2016
<u>/s/ Paula E. Boggs</u> Paula E. Boggs	Director	March 15, 2016
<u>/s/ Elizabeth M. Daley</u> Elizabeth M. Daley	Director	March 15, 2016
<u>/s/ Youngme E. Moon</u> Youngme E. Moon	Director	March 15, 2016
<u>/s/ John H. Park</u> John H. Park	Director	March 15, 2016
<u>/s/ Peter Westley</u> Peter Westley	Director	March 15, 2016

**EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Description</b>	<b>Filed with this Form 10-K</b>	<b>Incorporated by Reference</b>		
			<b>Form or Schedule</b>	<b>SEC Filing Date</b>	<b>SEC File Number</b>
3.1	Certificate of Amendment of the Third Amended and Restated Certificate of Incorporation of the Registrant		8-K	July 27, 2005	000-21174
3.2	Third Amended and Restated Certificate of Incorporation of the Registrant		10-Q	November 14, 2005	000-21174
3.3	Amended and Restated By-Laws of the Registrant, as amended		8-K	October 21, 2011	000-21174
4.1	Specimen Certificate representing the Registrant's Common Stock		S-1	March 11, 1993*	033-57796
4.2	Rights Agreement, dated as of January 6, 2014, between Registrant and Computershare Trust Company, N.A. as Rights Agent, including all exhibits thereto		8-K	January 7, 2014	000-21174
4.3	Amended Certificate of Designations, Preferences and Rights of Series A Junior Participating Preferred Stock		8-K	January 7, 2014	000-21174
10.1	Network Drive at Northwest Park Office Lease dated as of November 20, 2009 between Avid Technology, Inc. and Netview 5 and 6 LLC (for premises at 65 Network Drive, Burlington, Massachusetts)		8-K	November 25, 2009	000-21174
10.2	Network Drive at Northwest Park Office Lease dated as of November 20, 2009 between Avid Technology, Inc. and Netview 1,2,3,4 & 9 LLC (for premises at 75 Network Drive, Burlington, Massachusetts)		8-K	November 25, 2009	000-21174
#10.3	1993 Director Stock Option Plan, as amended		10-K	February 29, 2008	000-21174
#10.4	Second Amended and Restated 1996 Employee Stock Purchase Plan, as amended		10-K	March 16, 2010	000-21174
#10.5	Amendment No #2 to Second Amended and Restated 1996 Employee Stock Purchase Plan, as amended		10-K	September 12, 2014	001-36254
#10.6	1997 Stock Option Plan		10-K	March 27, 1998	000-21174
#10.7	1997 Stock Incentive Plan, as amended		10-Q	May 14, 1997	000-21174
#10.8	Second Amended and Restated Non-Qualified Deferred Compensation Plan		10-K	February 29, 2008	000-21174
#10.9	1998 Stock Option Plan		10-K	March 16, 2005	000-21174
#10.10	Amended and Restated 1999 Stock Option Plan		10-K	March 16, 2005	000-21174
#10.11	Amended and Restated 2005 Stock Incentive Plan		10-Q	August 7, 2008	000-21174
#10.12	Amendment No. 1 to Amended and Restated 2005 Stock Incentive Plan		10-K	September 12, 2014	001-36254
#10.13	Form of Incentive Stock Option Agreement under the Registrant's Amended and Restated 2005 Stock Incentive Plan		10-K	September 12, 2014	001-36254
#10.14	Form of Nonstatutory Stock Option Agreement under the Registrant's Amended and Restated 2005 Stock Incentive Plan		10-K	September 12, 2014	001-36254

#10.15	Form of Nonstatutory Stock Option Agreement for Outside Directors under the Registrant's Amended and Restated 2005 Stock Incentive Plan	8-K	July 8, 2008	000-21174
#10.16	Form of Restricted Stock Unit Agreement under the Registrant's Amended and Restated 2005 Stock Incentive Plan	8-K	July 8, 2008	000-21174
#10.17	Form of Restricted Stock Unit Agreement for Outside Directors under the Registrant's Amended and Restated 2005 Stock Incentive Plan	8-K	July 8, 2008	000-21174
#10.18	Form of Stock Option Agreement for UK Employees under the HM Revenue and Customs Approved Sub-Plan for UK Employees under the Registrant's Amended and Restated 2005 Stock Incentive Plan	8-K	July 8, 2008	000-21174
#10.19	Form of Nonstatutory Stock Option Grant Terms and Conditions (under the 1997 Stock Incentive Plan)	8-K	February 21, 2007	000-21174
#10.20	Form of Incentive Stock Option Grant Terms and Conditions (under the 1997 Stock Incentive Plan)	8-K	February 21, 2007	000-21174
#10.21	2014 Stock Incentive Plan	10-K	March 16, 2015	001-36254
#10.22	Form of Restricted Stock Unit Agreement under the Registrant's Amended and Restated 2014 Stock Incentive Plan	10-K	March 16, 2015	001-36254
#10.23	Form of NSO Agreement under the Registrant's 2014 Stock Incentive Plan	10-K	March 16, 2015	001-36254
#10.24	Form of ISO/NSO Agreement under the Registrant's 2014 Stock Incentive Plan	10-K	March 16, 2015	001-36254
#10.25	Separation Agreement dated February 6, 2013 between Registrant and Gary G. Greenfield	8-K/A	February 12, 2013	000-21174
#10.26	Consulting and Separation Agreement dated April 22, 2013 between the Registrant and Kenneth A Sexton	10-Q	September 12, 2014	001-36254
#10.27	Amended and Restated Executive Employment Agreement dated December 22, 2010 between the Registrant and Christopher C. Gahagan	10-K	March 14, 2011	000-21174
#10.28	Form of Executive Officer Employment Letter as of January 1, 2012	10-K	February 29, 2012	000-21174
#10.29	Summary of 2013 Annual Executive Incentive Program	10-K	September 12, 2014	001-36254
#10.30	Executive Employment Agreement dated February 11, 2013 between the Registrant and Louis Hernandez, Jr.	8-K/A	February 12, 2013	000-21174
#10.31	Amended and Restated Executive Employment Agreement dated April 22, 2013 between the Registrant and John Frederick	10-Q	September 12, 2014	001-36254
#10.32	2013 Remediation Bonus Plan	8-K	July 25, 2013	000-21174
#10.33	Summary of 2014 Annual Executive Incentive Program	10-Q	September 23, 2014	001-36254
10.34	Agreement and Plan of Merger, dated as of April 12, 2015, by and among Orad Hi-Tech Solutions	8-K	April 13, 2015	001-36254
10.35	Form of Voting and Support Agreement between Avid Technology, Inc. and certain shareholders of Orad Hi-Tech Solutions Ltd.	8-K	April 13, 2015	001-36254

10.36	Financing Commitment Letter, dated April 12, 2015, by and between Avid Technology, Inc. and the Lenders specified therein	8-K	April 13, 2015	001-36254
#10.37	Summary of Avid Technology, Inc.'s 2015 Executive Bonus Plan	10-Q	May 8, 2015	001-36254
10.38	Indenture, dated as of June 15, 2015, between Avid Technology, Inc. and Wells Fargo Bank, National Association (including the form of 2.00% Convertible Senior Notes due 2020)	8-K/A	June 16, 2015	001-36254
10.39	Base capped call transaction confirmation, dated as of June 9, 2015, by and between Jefferies International Limited and Avid Technology, Inc., in reference to the 2.00% Convertible Senior Notes due 2020	8-K/A	June 16, 2015	001-36254
10.40	Credit Agreement among Avid Technology, Inc., the Lenders named therein and KeyBank National Association dated June 22, 2015	8-K	June 23, 2015	001-36254
#10.41	Second Amended and Restated 1996 Employee Stock Purchase Plan, as amended July 2015	10-Q	November 6, 2015	001-36254
10.42	Financing Agreement, dated February 26, 2016, among Avid Technology, Inc., the Lenders named therein and Cerberus Business Finance, LLC.			X
21	Subsidiaries of the Registrant			X
23.1	Consent of Deloitte & Touche LLP			X
31.1	Certification of Principal Executive Officer pursuant to Rules 13a-14 and 15d-14 under the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002			X
31.2	Certification of Principal Financial Officer pursuant to Rules 13a-14 and 15d-14 under the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002			X
32.1	Certifications pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002			X
**100.INS	XBRL Instance Document			X
**100.SCH	XBRL Taxonomy Extension Schema Document			X
**100.CAL	XBRL Taxonomy Calculation Linkbase Document			X
**100.DEF	XBRL Taxonomy Definition Linkbase Document			X
**100.LAB	XBRL Taxonomy Label Linkbase Document			X
**100.PRE	XBRL Taxonomy Presentation Linkbase Document			X

# Management contract or compensatory plan identified pursuant to Item 15(a)3.

\* Effective date of Form S-1.

\*\* Pursuant to Rule 406T of Regulation S-T, XBRL (Extensible Business Reporting Language) information is deemed not filed or a part of a registration statement or prospectus for purposes of sections 11 or 12 of the Securities Act of 1933, is deemed not filed for purposes of section 18 of the Securities Exchange Act of 1934 and otherwise is not subject to liability under these sections.

**FINANCING AGREEMENT**

**Dated as of February 26, 2016**

**by and among**

**AVID TECHNOLOGY, INC.,  
as Parent and Borrower,**

**EACH SUBSIDIARY OF THE PARENT  
LISTED AS A GUARANTOR ON THE SIGNATURE PAGES HERETO,  
as Guarantors,**

**THE LENDERS FROM TIME TO TIME PARTY HERETO,  
as Lenders,**

**CERBERUS BUSINESS FINANCE, LLC,  
as Collateral Agent,**

**and**

**CERBERUS BUSINESS FINANCE, LLC,  
as Administrative Agent**

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## FINANCING AGREEMENT

Financing Agreement, dated as of February \_\_, 2016, by and among Avid Technology, Inc., a Delaware corporation (the "Parent" or the "Borrower"), each subsidiary of the Parent listed as a "Guarantor" on the signature pages hereto (together with each other Person that executes a joinder agreement and becomes a "Guarantor" hereunder or otherwise guaranties all or any part of the Obligations (as hereinafter defined), each a "Guarantor" and collectively, the "Guarantors"), the lenders from time to time party hereto (each a "Lender" and collectively, the "Lenders"), Cerberus Business Finance, LLC, a Delaware limited liability company ("CBF"), as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent"), and CBF, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent" and together with the Collateral Agent, each an "Agent" and collectively, the "Agents").

### RECITALS

The Borrower has asked the Lenders to extend credit to the Borrower consisting of (a) a term loan in the aggregate principal amount of \$100,000,000 and (b) a revolving credit facility in an aggregate principal amount not to exceed \$5,000,000 at any time outstanding. The proceeds of the term loan and the loans made under the revolving credit facility shall be used to refinance existing indebtedness of the Borrower, for general working capital purposes of the Borrower and its Subsidiaries (as hereinafter defined) and to pay fees and expenses related to this Agreement. The Lenders are severally, and not jointly, willing to extend such credit to the Borrower subject to the terms and conditions hereinafter set forth.

In consideration of the premises and the covenants and agreements contained herein, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS; CERTAIN TERMS

Section 1.01 Definitions. As used in this Agreement, the following terms shall have the respective meanings indicated below:

"Account Debtor" means, with respect to any Person, each debtor, customer or obligor in any way obligated on or in connection with any Account Receivable of such Person.

"Account Receivable" means, with respect to any Person, any and all accounts (as that term is defined in the Uniform Commercial Code), and any and all rights of such Person to payment for goods sold and/or services rendered, including accounts, general intangibles and any and all such rights evidenced by chattel paper, instruments or documents, whether due or to become due and whether or not earned by performance, and whether now or hereafter acquired or arising in the future, and any proceeds arising therefrom or relating thereto.

"Acquired Account" has the meaning specified therefor in Section 8.01(b).

"Acquired Cash Management Bank" has the meaning specified therefor in Section 8.01(d).

"Acquisition" means the acquisition (whether by means of a merger, consolidation or otherwise) of all of the Equity Interests of any Person or all or substantially all of the assets of (or any division or business line of) any Person.

"Action" has the meaning specified therefor in Section 12.12.

"Additional Amount" has the meaning specified therefor in Section 2.09.

"Administrative Agent" has the meaning specified therefor in the preamble hereto.

"Administrative Agent's Account" means an account at a bank designated by the Administrative Agent from time to time as the account into which the Loan Parties shall make all payments to the Administrative Agent for the benefit of the Agents and the Lenders under this Agreement and the other Loan Documents.

"Affiliate" means, with respect 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. For purposes of this definition, "control" of a Person means the power, directly or indirectly, either to (a) vote 10% or more of the Equity Interests having ordinary voting power for the election of members of the Board of Directors of such Person or (b) direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Notwithstanding anything herein to the contrary, in no event shall any Agent or any Lender be considered an "Affiliate" of any Loan Party.

"Agent" has the meaning specified therefor in the preamble hereto.

"Agreement" means this Financing Agreement, including all amendments, modifications and supplements and any exhibits or schedules to any of the foregoing, and shall refer to this Agreement as the same may be in effect at the time such reference becomes operative.

"Anti-Corruption Laws" has the meaning specified therefor in Section 6.01(z).

"Anti-Money Laundering and Anti-Terrorism Laws" means any applicable laws relating to terrorism, economic sanctions or money laundering, including, without limitation, (a) the Money Laundering Control Act of 1986 (*i.e.*, 18 U.S.C. §§ 1956 and 1957), (b) the Bank Secrecy Act of 1970 (31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959), and the implementing regulations promulgated thereunder, (c) the USA PATRIOT Act and the implementing regulations promulgated thereunder, (d) the laws, regulations and Executive Orders administered by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC"), (e) any law prohibiting terrorist activities or the financing or support of terrorist activities (*e.g.*, 18 U.S.C. §§ 2339A and 2339B), and (f) any similar laws enacted in the United States or any other jurisdictions

in which the Loan Parties conduct business as any of the foregoing laws have been, or shall hereafter be, amended, renewed, extended, or replaced.

"Applicable Margin" means, as of any date of determination, with respect to the interest rate of (a) any Reference Rate Loan or any portion thereof, 5.75%, (b) any LIBOR Rate Loan or any portion thereof, 6.75% and (c) the Unused Line Fee, 0.5%.

"Applicable Premium" means

(a) as of the date of the occurrence of an Applicable Premium Trigger Event specified in clause (c), (d) or (e) of the definition thereof:

(i) during the period of time from and after the Effective Date up to and including the date that is the first anniversary of the Effective Date (the "First Period"), an amount equal to 3.0% times the aggregate amount equal to the sum of (A) the principal amount of all Term Loans outstanding, (B) the principal amount of all Revolving Loans outstanding and (C) the amount of the undrawn Total Revolving Credit Commitment, in each case, on the date of such Applicable Premium Trigger Event;

(ii) during the period of time after the First Period up to and including the date that is the second anniversary of the Effective Date (the "Second Period"), an amount equal to 2.0% times the aggregate amount equal to the sum of (A) the principal amount of all Term Loans outstanding, (B) the principal amount of all Revolving Loans outstanding and (C) the amount of the undrawn Total Revolving Credit Commitment, in each case, outstanding on the date of such Applicable Premium Trigger Event;

(iii) during the period of time after the Second Period up to and including the date that is the third anniversary of the Effective Date (the "Third Period"), an amount equal to 1.0% times the aggregate amount equal to the sum of (A) the principal amount of all Term Loans outstanding, (B) the principal amount of all Revolving Loans outstanding and (C) the amount of the undrawn Total Revolving Credit Commitment, in each case, outstanding on the date of such Applicable Premium Trigger Event; and

(iv) thereafter, zero;

(b) as of the date of the occurrence of an Applicable Premium Trigger Event specified in clause (a) of the definition thereof:

(i) during the First Period, an amount equal to 3.0% times the amount of the permanent reduction of the Total Revolving Credit Commitment on such date;

(ii) during the Second Period, an amount equal to 2.0% times the amount of the permanent reduction of the Total Revolving Credit Commitment on such date;

(iii) during the Third Period, an amount equal to 1.0% times the amount of the permanent reduction of the Total Revolving Credit Commitment on such date; and

(iv) thereafter, zero;

(c) as of the date of the occurrence of an Applicable Premium Trigger Event specified in clause (b) of the definition thereof:

(i) during the First Period, an amount equal to 3.0% times the principal amount of the Term Loan being paid on such date;

(ii) during the Second Period, an amount equal to 2.0% times the principal amount of the Term Loan being paid on such date;

(iii) during the Third Period, an amount equal to 1.0% times the principal amount of the Term Loan being paid on such date; and

(iv) thereafter, zero.

"Applicable Premium Trigger Event" means (without duplication)

(a) any permanent reduction of the Total Revolving Credit Commitment pursuant to Section 2.05;

(b) any payment by any Loan Party of all, or any part, of the principal balance of any Term Loan for any reason (including, but not limited to, any optional prepayment or mandatory prepayment (other than payments of the Term Loan pursuant to Section 2.03(b) and any mandatory prepayment under Section 2.05(c)(i) or Section 2.05(c)(iv))) whether before or after (i) the occurrence of an Event of Default, or (ii) the commencement of any Insolvency Proceeding, and notwithstanding any acceleration (for any reason) of the Obligations;

(c) the acceleration of the Obligations for any reason, including, but not limited to, acceleration in accordance with Section 9.01, including as a result of the commencement of an Insolvency Proceeding;

(d) the satisfaction, release, payment, restructuring, reorganization, replacement, reinstatement, defeasance or compromise of any of the Obligations in any Insolvency Proceeding, foreclosure (whether by power of judicial proceeding or otherwise) or deed in lieu of foreclosure or the making of a distribution of any kind in any Insolvency Proceeding to the Agent, for the account of the Lenders in full or partial satisfaction of the Obligations; or

(e) the termination of this Agreement for any reason.

For purposes of the definition of the term Applicable Premium, if an Applicable Premium Trigger Event occurs under clause (c), (d) or (e), the entire outstanding principal amount

of the Term Loan shall be deemed to have been prepaid on the date on which such Applicable Premium Trigger Event occurs.

"Assignment and Acceptance" means an assignment and acceptance entered into by an assigning Lender and an assignee, and accepted by the Collateral Agent (and the Administrative Agent, if applicable), in accordance with Section 12.07 hereof and substantially in the form of Exhibit B hereto or such other form acceptable to the Collateral Agent.

"Authorized Officer" means, with respect to any Person, the chief executive officer, chief operating officer, chief financial officer, treasurer or other financial officer performing similar functions, president or executive vice president of such Person.

"Availability" means, at any time, the difference between (a) the Total Revolving Credit Commitment and (b) the aggregate outstanding principal amount of all Revolving Loans.

"Avid CV" means Avid Technology C.V., a Netherlands company.

"Avid GP BV" means Avid General Partner B.V., a Netherlands company.

"Avid Worldwide" means Avid Technology Worldwide, Inc., a Delaware corporation.

"Bankruptcy Code" means Title 11 of the United States Code, as amended from time to time and any successor statute or any similar federal or state law for the relief of debtors.

"Blocked Person" means any Person:

(a) that (i) is identified on the list of "Specially Designated Nationals and Blocked Persons" published by OFAC; (ii) is ordinarily resident in or is organized or chartered in a country or territory that is the subject of a comprehensive OFAC Sanctions Program (currently Iran, Syria, Sudan, Cuba, and the Crimea region of Ukraine); or (iii) is prohibited from dealing or engaging in a transaction with a United States Person under any of the Anti-Money Laundering and Anti-Terrorism Laws; and

(b) that is owned or controlled by, or that owns or controls, or that is acting for or on behalf of, any Person described in clause (a) above where dealings with that Person would be prohibited under applicable Anti-Money Laundering and Anti-Terrorism Laws.

"Board" means the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Board of Directors" means with respect to (a) any corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board, (b) a partnership, the governing body of the general partner of the partnership, (c) a limited liability company, the managing member or members or any controlling committee or board of directors or managers of such company or the sole member or the managing member thereof, and (d) any other Person, the board or committee of such Person serving a similar function.

"Borrower" has the meaning specified therefor in the preamble hereto.

"Business Day" means (a) for all purposes other than as described in clause (b) below, any day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required to close, and (b) with respect to the borrowing, payment or continuation of, or determination of interest rate on, LIBOR Rate Loans, any day that is a Business Day described in clause (a) above and on which dealings in Dollars may be carried on in the interbank eurodollar markets in New York City and London.

"Business Disposition" means the disposition of all of the outstanding Equity Interests of, or the assets compromising a division or business unit of, the Parent or its Subsidiaries.

"Capital Expenditures" means, with respect to any Person for any period, the sum of (a) the aggregate of all expenditures by such Person and its Subsidiaries during such period that in accordance with GAAP are or should be included in "property, plant and equipment" or in a similar fixed asset account on its balance sheet, whether such expenditures are paid in cash or financed, including all Capitalized Lease Obligations that are paid or due and payable during such period and (b) to the extent not covered by clause (a) above, the aggregate of all expenditures by such Person and its Subsidiaries during such period to acquire by purchase or otherwise the business or fixed assets of, or the Equity Interests of, any other Person; provided, that the term "Capital Expenditures" shall not include any such expenditures which constitute (i) expenditures financed with the proceeds received from the sale or issuance of Equity Interests, (ii) a Permitted Acquisition or any other Permitted Investment, (iii) expenditures that are accounted for as capital expenditures of such Person and that actually are paid for by a third party (excluding any Loan Party) and for which no Loan Party has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such third party or any other person (whether before, during or after such period), (iv) expenditures made with tenant allowances received by the Parent or any of its Subsidiaries from landlords in the ordinary course of business and subsequently capitalized, and (v) the purchase price of equipment that is purchased substantially contemporaneously with the trade in of existing equipment to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time.

"Capitalized Lease" means, with respect to any Person, any lease of (or other arrangement conveying the right to use) real or personal property by such Person as lessee that is required under GAAP to be capitalized on the balance sheet of such Person.

"Capitalized Lease Obligations" means, with respect to any Person, obligations of such Person and its Subsidiaries under Capitalized Leases, and, for purposes hereof, the amount of any such obligation shall be the capitalized amount thereof determined in accordance with GAAP.

"Capped Call Counterparty" means Jefferies International Limited (or an affiliate thereof) and its successors and assigns, or another Person reasonably acceptable to the Administrative Agent.

"Capped Call Hedge Agreements" means the call options or capped call options (or substantially equivalent derivative transactions) on the Borrower's common stock entered into prior

to the Effective Date in connection with the issuance of the Convertible Notes with the Capped Call Counterparty which are intended to reduce the potential dilution to the common stock of the Borrower and/or offset any cash payments that the Borrower would otherwise be required to make in excess of the principal amount of the Convertible Notes upon conversion of the Convertible Notes.

"Cash Equivalents" means (a) marketable direct obligations issued 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 360 days from the date of acquisition thereof; (b) commercial paper, maturing not more than 360 days after the date of issue rated P-1 by Moody's or A-1 by Standard & Poor's; (c) certificates of deposit maturing not more than 360 days after the date of issue, issued by commercial banking institutions and money market or demand deposit accounts maintained at commercial banking institutions, each of which is a member of the Federal Reserve System and has a combined capital and surplus and undivided profits of not less than \$500,000,000; (d) repurchase agreements having maturities of not more than 90 days from the date of acquisition which are entered into with major money center banks included in the commercial banking institutions described in clause (c) above and which are secured by readily marketable direct obligations of the United States Government or any agency thereof; (e) money market accounts maintained with mutual funds having assets in excess of \$2,500,000,000, which assets are primarily comprised of Cash Equivalents described in another clause of this definition; (f) marketable tax exempt securities rated A or higher by Moody's or A+ or higher by Standard & Poor's, in each case, maturing within 270 days from the date of acquisition thereof; and (g) in the case of any Foreign Subsidiary, cash and cash equivalents that are substantially equivalent in such jurisdiction to those described in clauses (a) through (f) above in respect of each country that is a member of the Organization for Economic Co-operation and Development.

"Cash Management Accounts" means the bank accounts of each Loan Party maintained at one or more Cash Management Banks listed on Schedule 8.01.

"Cash Management Bank" has the meaning specified therefor in Section 8.01(a).

"CBF" has the meaning specified in the preamble hereto.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives concerning capital adequacy 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 shall, in each case, be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change of Control" means each occurrence of any of the following:

(a) the acquisition, directly or indirectly, by any person or group (within the meaning of Section 13(d)(3) of the Exchange Act) that owns 5% or less of the Equity Interests of the Parent as of the Effective Date of beneficial ownership of more than 33% on a fully diluted basis of the aggregate outstanding voting power of the Equity Interests of the Parent;

(b) the acquisition, directly or indirectly, by any person or group (within the meaning of Section 13(d)(3) of the Exchange Act) that owns more than 5% of the Equity Interests of the Parent as of the Effective Date of beneficial ownership of more than 50% on a fully diluted basis of the aggregate outstanding voting power of the Equity Interests of the Parent;

(c) during any period of 24 consecutive months, individuals who at the beginning of such period constituted the Board of Directors of the Parent (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of the Parent was approved by, or subsequently ratified by, a vote of at least a majority of the directors of the Parent then still in office who were either directors at the beginning of such period, or whose election or nomination for election was previously approved) cease for any reason to constitute a majority of the Board of Directors of the Parent;

(d) the Parent shall cease to have beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of 100% of the aggregate voting or economic power of the Equity Interests of each other Loan Party and each of its Subsidiaries (other than in connection with any transaction permitted pursuant to Section 7.02(c)), free and clear of all Liens (other than Permitted Specified Liens); or

(e) the occurrence of a "Fundamental Change" (as defined in the Convertible Note Indenture) or a "Change of Control" (or any comparable term or provision) under or with respect to any of the Indebtedness (with a principal amount in excess of \$5,000,000) or the Equity Interests of the Parent or any of its Subsidiaries.

"Collateral" means all of the property and assets and all interests therein and proceeds thereof now owned or hereafter acquired by any Person upon which a Lien is granted or purported to be granted by such Person as security for all or any part of the Obligations.

"Collateral Agent" has the meaning specified therefor in the preamble hereto.

"Collateral Agent Advances" has the meaning specified therefor in Section 10.08(a).

"Collections" means all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, proceeds of cash sales, rental proceeds, and tax refunds).

"Commitments" means, with respect to each Lender, such Lender's Revolving Credit Commitment and Term Loan Commitment.

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

"Compliance Certificate" has the meaning assigned to such term in Section 7.01(a)(iv).

"Consolidated EBITDA" means, with respect to any Person for any period:

(a) the Consolidated Net Income of such Person for such period,  
plus

(b) without duplication, the sum of the following amounts for such period to the extent deducted in the calculation of Consolidated Net Income for such period:

(i) any provision for income taxes (including United States federal income taxes) or any other taxes measured by net income,

(ii) Consolidated Interest Expense,

(iii) any loss from extraordinary items,

(iv) any depreciation and amortization expense,

(v) any aggregate net loss on the Disposition of property (other than accounts and Inventory) outside the ordinary course of business,

(vi) any other non-cash expenditure, charge or loss for such period (other than any non-cash expenditure, charge or loss relating to write-offs, write-downs or reserves with respect to accounts and Inventory),

(vii) one-time charges incurred in connection with the restatement of the Borrower's financial statements and costs associated therewith, provided that such charges are factually supportable and in an aggregate amount not to exceed \$2,000,000 through December 31, 2017,

(viii) costs and expenses incurred in such period to the extent actually reimbursed by third parties in such period pursuant to indemnification, contribution or other reimbursement obligations to the extent that such amounts so reimbursed are not otherwise already included in the calculation of net earnings,

(ix) any one-time customary charges, fees or expenses paid (1) in connection with the execution and delivery of the Loan Documents on the Effective Date to the extent incurred on and after January 1, 2016 and prior to June 30, 2016 or (2) in connection with the Orad Acquisition to the extent incurred on and after January 1, 2015 and prior to March 31, 2016,

(x) one-time charges incurred in connection with restructuring activities and other non-recurring costs identified on Schedule 1.01(C) in an aggregate amount not to exceed \$28,100,000 in the aggregate through December 31, 2017,

(xi) one-time customary charges, costs, fees and expenses paid in connection with (1) the consummation of a Permitted Acquisition (other than the Orad Acquisition) (including, without limitation, any indebtedness or equity issued to finance such acquisition) and (2) the making of any other Permitted Investments, in each case to the extent (y) such charges, costs, fees and expenses are factually supportable and (z) the aggregate amount of such charges, costs, fees and expenses does not exceed \$500,000 in any Fiscal Year,

(xii) non-recurring expenses for such period incurred in connection with the settlement of litigation that is not in the ordinary course of business, provided, that such expenses are factually supportable and in an aggregate amount not to exceed \$1,000,000, and

(xiii) non-cash exchange, translation, or performance losses relating to any hedging transactions or foreign currency fluctuations,

minus

(c) without duplication, the sum of the following amounts for such period to the extent included in the calculation of such Consolidated Net Income for such period:

(i) any credit for United States federal income taxes or other taxes measured by net income,

(ii) any gain from extraordinary items,

(iii) any aggregate net gain from the Disposition of property (other than accounts and Inventory) outside the ordinary course of business, and

(iv) any other non-cash gain, including any reversal of a charge referred to in clause (b)(vi) above by reason of a decrease in the value of any Equity Interest;

in each case, determined on a consolidated basis in accordance with GAAP. The parties hereto agree that Consolidated EBITDA for the fiscal quarter ending (i) on March 31, 2015 shall be deemed to be \$11,772,560, (ii) on June 30, 2015 shall be deemed to be \$1,438,456, and (iii) on September 30, 2015 shall be deemed to be \$24,952,023.

For purposes of calculating Consolidated EBITDA for any period, pursuant to any determination of any covenant contained in Section 7.03, (A) if at any time during such period the Parent or any of its Subsidiaries thereof shall have made any Business Disposition, Consolidated EBITDA for such period shall be reduced by an amount equal to the Consolidated EBITDA (if positive) attributable to the Equity Interests or the assets, as applicable, that is the subject of such Business Disposition for such period or increased by an amount equal to the Consolidated EBITDA (if negative) attributable thereto

for such period as if such Business Disposition occurred on the first day of such period, and (B) if during such period the Parent or any of its Subsidiaries thereof shall have made a Permitted Acquisition, the Consolidated EBITDA for such period shall be calculated after giving pro forma effect thereto as if such Permitted Acquisition occurred on the first day of such period; provided, that the pro forma adjustments contemplated by this paragraph shall not exceed the amounts approved in writing by the Collateral Agent.

"Consolidated Net Income" means, with respect to any Person, for any period, the consolidated net income (or loss) of such Person and its Subsidiaries for such period; provided, however, that the following shall be excluded: (a) the net income of any other Person (other than a Subsidiary) in which such Person or one of its Subsidiaries has a joint interest with a third-party (which interest does not cause the net income of such other Person to be consolidated into the net income of such Person), except to the extent of the amount of dividends or distributions paid to such Person or Subsidiary, (b) the net income of any Subsidiary of such Person that is, on the last day of such period, subject to any restriction or limitation on the payment of dividends or the making of other distributions, to the extent of such restriction or limitation, and (c) the net income of any other Person arising prior to such other Person becoming a Subsidiary of such Person or merging or consolidating into such Person or its Subsidiaries.

"Consolidated Interest Expense" means, with respect to any Person for any period, interest expense of such Person and its Subsidiaries for such period determined on a consolidated basis and in accordance with GAAP (including, without limitation, interest expense paid to Affiliates of such Person).

"Contingent Indemnity Obligations" means any Obligation constituting a contingent, unliquidated indemnification obligation of any Loan Party, in each case, to the extent (a) such obligation has not accrued and is not yet due and payable and (b) no claim has been made or is reasonably anticipated to be made with respect thereto.

"Contingent Obligation" means, with respect to any Person, any obligation of such Person guaranteeing or intending to guarantee any Indebtedness, leases, dividends or other obligations ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of a primary obligor, (b) the obligation to make take-or-pay or similar payments, if required, regardless of nonperformance by any other party or parties to an agreement, (c) any obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (A) for the purchase or payment of any such primary obligation or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, assets, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term "Contingent Obligation" shall not include (a) any product warranties extended in the

ordinary course of business, (b) endorsements of instruments for deposit or collection in the ordinary course of business or (c) indemnities incurred in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation with respect to which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto (assuming such Person is required to perform thereunder), as determined by such Person in good faith.

"Contractual Obligation" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control Agreement" means, with respect to any deposit account, any securities account, commodity account, securities entitlement or commodity contract, an agreement, in form and substance reasonably satisfactory to the Collateral Agent, among the Collateral Agent, the financial institution or other Person at which such account is maintained or with which such entitlement or contract is carried and the Loan Party maintaining such account, effective to grant "control" (as defined under the applicable UCC) over such account to the Collateral Agent.

"Convertible Notes" means the 2.0% Convertible Senior Notes due 2020 issued by the Borrower pursuant to the Convertible Note Indenture.

"Convertible Note Indenture" means the Indenture, dated as of June 15, 2015, between the Borrower and Wells Fargo Bank, National Association, as trustee.

"Current Value" has the meaning specified therefor in Section 7.01(m).

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

"Default" means an event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Defaulting Lender" means any Lender that (a) has failed to (i) fund all or any portion of its Loans within 2 Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within 2 Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and

states that such position is based on such Lender's good faith determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement)) cannot be satisfied), (c) has failed, within 3 Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), 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, or (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. Notwithstanding anything to the contrary herein, a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permits such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to the Borrower and each Lender.

"Disbursement Letter" means a disbursement letter, in form and substance reasonably satisfactory to the Collateral Agent, by and among the Loan Parties, the Agents, the Lenders and the other Persons party thereto, and the related funds flow memorandum describing the sources and uses of all cash payments in connection with the transactions contemplated to occur on the Effective Date.

"Disposition" means any transaction, or series of related transactions, pursuant to which any Person or any of its Subsidiaries sells, assigns, transfers, leases, licenses (as licensor) or otherwise disposes of any property or assets (whether now owned or hereafter acquired) to any other Person, in each case, whether or not the consideration therefor consists of cash, securities or other assets owned by the acquiring Person. For purposes of clarification, "Disposition" shall include (a) the sale or other disposition for value of any contracts or (b) the early termination or modification of any contract resulting in the receipt by any Loan Party of a cash payment or other consideration in exchange for such event (other than payments in the ordinary course for accrued and unpaid amounts due through the date of termination or modification).

"Disqualified Equity Interests" means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interest into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations and the termination of the Commitments), (b) is redeemable at the option of the holder thereof, in whole

or in part, (c) provides for the scheduled payments of dividends or distributions in cash, or (d) is convertible into or exchangeable for (i) Indebtedness or (ii) any other Equity Interests that would constitute Disqualified Equity Interests, in each case of clauses (a) through (d), prior to the date that is 91 days after the Final Maturity Date.

"Dollar," "Dollars" and the symbol "\$" each means lawful money of the United States of America.

"Domestic Subsidiary" means any Subsidiary that is organized and existing under the laws of the United States or any state or commonwealth thereof or under the laws of the District of Columbia.

"Effective Date" has the meaning specified therefor in Section 5.01.

"Employee Plan" means an employee benefit plan (other than a Multiemployer Plan) covered by Title IV of ERISA and maintained for employees of any Loan Party or any of its ERISA Affiliates at any time during the prior six calendar years.

"Environmental Actions" means any complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter or other written communication from any Person or Governmental Authority involving violations of Environmental Laws or Releases of Hazardous Materials (a) from any assets, properties or businesses owned or operated by any Loan Party or any of its Subsidiaries or any predecessor in interest; (b) from adjoining properties or businesses; or (c) onto any facilities which received Hazardous Materials generated by any Loan Party or any of its Subsidiaries or any predecessor in interest.

"Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), the Federal Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.) and the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), as such laws may be amended or otherwise modified from time to time, and any other Requirement of Law, permit, license or other binding determination of any Governmental Authority imposing liability or establishing standards of conduct for protection of the environment or the Release of any Hazardous Materials into the environment.

"Environmental Liabilities and Costs" means all liabilities, monetary obligations, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants and costs of investigations and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand by any Governmental Authority or any third party, and which relate to any environmental condition on or a Release of Hazardous Materials from or onto (a) any property presently or formerly owned by any Loan Party or any of its Subsidiaries or (b) any facility which received Hazardous Materials generated by any Loan Party or any of its Subsidiaries.

"Environmental Lien" means any Lien in favor of any Governmental Authority for Environmental Liabilities and Costs.

"Equity Interests" means (a) all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership or membership interests, joint venture interests, participations or other ownership interests in or equivalents (regardless of how designated) of or in a Person (other than an individual), whether voting or non-voting and (b) all securities convertible into or exchangeable for any of the foregoing with respect to such Person and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any of the foregoing, whether or not presently convertible, exchangeable or exercisable, but, in each case, excluding (a) any debt security (including the Convertible Notes) that is convertible into or exchangeable for any such shares (or such other equity interests) prior to the conversion or exchange and (b) any stock appreciation rights, interests in phantom equity plans or similar rights or interests.

"Equity Issuance" means either (a) the sale or issuance by any Loan Party or any of its Subsidiaries of any shares of its Equity Interests other than to a Loan Party or any of its Subsidiaries or (b) the receipt by the Parent of any cash capital contributions.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and regulations thereunder, in each case, as in effect from time to time. References to sections of ERISA shall be construed also to refer to any successor sections.

"ERISA Affiliate" means, with respect to any Person, any trade or business (whether or not incorporated) which is a member of a group of which such Person is a member and which would be deemed to be a "controlled group" within the meaning of Sections 414(b), (c), (m) and (o) of the Internal Revenue Code.

"Event of Default" has the meaning specified therefor in Section 9.01.

"Excess Cash Flow" means, with respect to any Person for any period, (a) Consolidated EBITDA of such Person and its Subsidiaries for such period, less (b) the sum of, without duplication, (i) all cash principal payments on the Loans made during such period (but, in the case of the Revolving Loans, only to the extent that the Total Revolving Credit Commitment is permanently reduced by the amount of such payments), and all cash principal payments on Indebtedness (other than Indebtedness incurred under this Agreement) of such Person or any of its Subsidiaries during such period to the extent such other Indebtedness is permitted to be incurred, and such payments are permitted to be made, under this Agreement (but, in the case of revolving loans, only to the extent that the revolving credit commitment in respect thereof is permanently reduced by the amount of such payments), (ii) all Consolidated Interest Expense to the extent paid or payable in cash during such period, (iii) the cash portion of Capital Expenditures made by such Person and its Subsidiaries during such period to the extent permitted to be made under this Agreement (excluding Capital Expenditures to the extent financed through the incurrence of Indebtedness (other than the Revolving Loan) or through an Equity Issuance), (iv) all scheduled loan servicing fees and other similar fees in respect of Indebtedness of such Person or any of its Subsidiaries paid in cash during such period, to the extent such Indebtedness is permitted to be incurred, and such payments are permitted to be made, under this Agreement,

(v) income taxes paid in cash by such Person and its Subsidiaries for such period, (vi) the excess, if any, of Working Capital at the end of such period over Working Capital at the beginning of such period (or minus the excess, if any, of Working Capital at the beginning of such period over Working Capital at the end of such period), (vii) cash charges, expenses or losses added to Consolidated Net Income pursuant to the definition of Consolidated EBITDA, (viii) the aggregate amount of all extraordinary, unusual or non-recurring cash losses to the extent excluded in calculating Consolidated Net Income, or (ix) the amount, if any, which, in the determination of Consolidated EBITDA for such period, has been included in respect of income or gain from Dispositions of the Parent and its Subsidiaries to the extent utilized to repay or prepay Loans pursuant to Section 2.05(c).

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Excluded Account" means (a) any deposit account specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of any Loan Party's or any of their Subsidiaries' employees, (b) any Petty Cash Accounts, (c) deposit accounts and securities accounts in the United States holding not more than \$200,000 at any one time in the aggregate for all such accounts of the Loan Parties and their Subsidiaries, (d) deposit accounts and securities accounts outside the United States holding not more than \$1,000,000 for any period of 5 Business Days in the aggregate for all such accounts of the Loan Parties and their Subsidiaries, (e) deposit accounts and securities accounts of the Foreign Subsidiaries of the Borrower (provided, that such accounts shall not hold more than \$20,000,000 for any period of 5 Business Days in the aggregate at any time for all such accounts), (f) the Stock Repurchase Account to acquire the common stock of the Borrower in connection with the Stock Repurchase Program (provided, that such account does not hold more than \$20,000 at any time and is closed within 60 days after the Effective Date), and (g) deposit accounts and securities accounts that are cash collateral for letters of credit permitted hereunder.

"Excluded Lenders" means any Persons or institutions identified in writing by the Borrower to the Collateral Agent on or prior to the date hereof (as the same may be supplemented from time to time with the consent of the Collateral Agent).

"Excluded Subsidiary" means (i) any Non-Wholly Owned Subsidiary that is legally prohibited from guaranteeing the Indebtedness of any other Person (other than a Wholly Owned Subsidiary of such Non-Wholly Owned Subsidiary) pursuant to Requirements of Law, (ii) any Subsidiary of the Parent that is a "controlled foreign corporation" within the meaning of Section 957 of the Internal Revenue Code, and (iii) any Subsidiary of a "controlled foreign corporation" within the meaning of Section 957 of the Internal Revenue Code.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to

a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.12(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.09, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.09(d) and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Executive Order No. 13224" means the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

"Existing Credit Facility" means the Credit Agreement, dated as of June 22, 2015, by and among the Borrower, KeyBank National Association, as administrative agent, and the lenders from time to time party thereto, as amended and/or modified from time to time prior to the Effective Date.

"Existing Lenders" means the lenders party to the Existing Credit Facility.

"Extraordinary Receipts" means any cash received by the Parent or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds described in Section 2.05(c)(ii) or (iii) hereof), including, without limitation, (a) foreign, United States, state or local tax refunds, (b) pension plan reversions, (c) proceeds of insurance (other than to the extent such insurance proceeds are (i) immediately payable to a Person that is not the Parent or any of its Subsidiaries in accordance with applicable Requirements of Law or with Contractual Obligations entered into in the ordinary course of business or (ii) received by the Parent or any of its Subsidiaries as reimbursement for any out-of-pocket costs incurred or made by such Person prior to the receipt thereof directly related to the event resulting from the payment of such proceeds), (d) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action (other than to the extent all or any portion of amounts so received are (i) immediately payable to a Person that is not an Affiliate of the Parent or any of its Subsidiaries or (ii) received by the Parent or any of its Subsidiaries as reimbursement for any costs previously incurred or any payment previously made by such Person), (e) condemnation awards (and payments in lieu thereof), (f) indemnity payments other than to the extent such indemnity payments are (i) immediately payable to a Person that is not an Affiliate of the Parent or any of its Subsidiaries or (ii) received by the Parent or any of its Subsidiaries as reimbursement for any costs previously incurred or any payment previously made by such Person) and (g) any purchase price adjustment received in connection with any purchase agreement.

"Facility" means the real property identified on Schedule 1.01(B) and any New Facility hereafter acquired by the Parent or any of its Subsidiaries, including, without limitation, the land on which each such facility is located, all buildings and other improvements thereon, and all fixtures located thereat or used in connection therewith.

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"FATCA" means Sections 1471 through 1474 of the Internal Revenue 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) and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"Fee Letter" means the fee letter, dated as of the date hereof, among the Borrower and the Collateral Agent.

"Final Maturity Date" means the earlier to occur of (a) February 26, 2021 and (b) the date that is 30 days' prior to the scheduled maturity date of the Convertible Notes.

"Financial Statements" means (a) the audited consolidated balance sheet of the Parent and its Subsidiaries for the Fiscal Year ended December 31, 2014, and the related consolidated statement of operations, shareholders' equity and cash flows for the Fiscal Year then ended, and (b) the unaudited consolidated balance sheet of the Parent and its Subsidiaries for the 9 months ended September 30, 2015, and the related consolidated statement of operations, shareholder's equity and cash flows for such period.

"Fiscal Year" means the fiscal year of the Parent and its Subsidiaries ending on December 31 of each year.

"Foreign Official" has the meaning specified therefor in Section 6.01(z).

"Foreign Subsidiary" means any Subsidiary of the Parent that is not a Domestic Subsidiary.

"Funding Losses" has the meaning specified therefor in Section 2.08.

"GAAP" means generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis, provided that for the purpose of Section 7.03 hereof and the definitions used therein, "GAAP" shall mean generally accepted accounting principles in effect on the date hereof and consistent with those used in the preparation of the Financial Statements, provided, further, that if there occurs after the date of this Agreement any change in GAAP that affects in any respect the calculation of any covenant contained in Section 7.03 hereof, the Collateral Agent and the Borrower shall negotiate in good faith amendments to the provisions of this Agreement that relate to the calculation of such covenant with the intent of having the respective positions of the Lenders and the Borrower after such change in GAAP conform as nearly as possible to their respective

positions as of the date of this Agreement and, until any such amendments have been agreed upon, the covenants in Section 7.03 hereof shall be calculated as if no such change in GAAP has occurred.

"Governing Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization, and the operating agreement; (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture, declaration or other applicable agreement or documentation evidencing or otherwise relating to its formation or organization, governance and capitalization; and (d) with respect to any of the entities described above, any other agreement, instrument, filing or notice with respect thereto filed to effectuate its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization.

"Governmental Authority" means any nation or government, any foreign, Federal, state, territory, provincial, city, town, municipality, county, local or other political subdivision thereof or thereto and any department, commission, board, bureau, instrumentality, agency or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guaranteed Obligations" has the meaning specified therefor in Section 11.01.

"Guarantor" means (a) each Subsidiary of the Parent listed as a "Guarantor" on the signature pages hereto, and (b) each other Person which guarantees in writing, pursuant to Section 7.01(b) or otherwise, all or any part of the Obligations, it being understood and agreed that no Excluded Subsidiaries of the Parent shall be Guarantors.

"Guaranty" means (a) the guaranty of each Guarantor party hereto contained in Article XI hereof and (b) each other guaranty, in form and substance satisfactory to the Collateral Agent, made by any other Guarantor in favor of the Collateral Agent for the benefit of the Agents and the Lenders guaranteeing all or part of the Obligations.

"Hazardous Material" means (a) any element, compound or chemical that is defined, listed or otherwise classified as a contaminant, pollutant, toxic pollutant, toxic or hazardous substance, extremely hazardous substance or chemical, hazardous waste, special waste, or solid waste under Environmental Laws or that endangers the environment or risk to human health or safety, including, without limitation, any pollutant, contaminant, hazardous waste or toxic substance which is defined or identified in any Environmental Law and which is present in the environment in such quantity that it violates any Environmental Law; (b) petroleum and its refined products; (c) polychlorinated biphenyls; (d) any substance exhibiting a hazardous waste characteristic, including, without limitation, corrosivity, ignitability, toxicity or reactivity as well as any radioactive or explosive materials; and (e) any asbestos-containing materials.

"Hedging Agreement" means any interest rate, foreign currency, commodity or equity swap, collar, cap, floor or forward rate agreement, or other agreement or arrangement designed to

protect against fluctuations in interest rates or currency, commodity or equity values (including, without limitation, any option with respect to any of the foregoing and any combination of the foregoing agreements or arrangements), and any confirmation executed in connection with any such agreement or arrangement.

"Highest Lawful Rate" means, with respect to any Agent or any Lender, the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Obligations under laws applicable to such Agent or such Lender which are currently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than applicable laws now allow.

"Holdout Lender" has the meaning specified therefor in Section 12.02(b).

"Indebtedness" means, with respect to any Person, without duplication, (a) all indebtedness of such Person for borrowed money; (b) all obligations of such Person for the deferred purchase price of property or services (other than trade payables or other accounts payable incurred in the ordinary course of such Person's business and not outstanding for more than 120 days after the date such payable was created, any earn-out, purchase price adjustment or similar obligation until such obligation appears in the liabilities section of the balance sheet of such Person); (c) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments or upon which interest payments are customarily made; (d) all reimbursement, payment or other obligations and liabilities of such Person created or arising under any conditional sales or other title retention agreement with respect to property used and/or acquired by such Person, even though the rights and remedies of the lessor, seller and/or lender thereunder may be limited to repossession or sale of such property; (e) all Capitalized Lease Obligations of such Person; (f) all obligations and liabilities, contingent or otherwise, of such Person, in respect of letters of credit, acceptances and similar facilities; (g) all obligations and liabilities, calculated on a basis satisfactory to the Collateral Agent and in accordance with accepted practice, of such Person under Hedging Agreements; (h) all monetary obligations under any receivables factoring, receivables sales or similar transactions and all monetary obligations under any synthetic lease, tax ownership/operating lease, off-balance sheet financing or similar financing; (i) all Contingent Obligations in respect of any of the foregoing; (j) all Disqualified Equity Interests; and (k) all obligations referred to in clauses (a) through (j) of this definition of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien upon property owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness. Notwithstanding the foregoing, the amount of Indebtedness in which recourse is limited to an identified asset shall be equal to the lesser of (A) the amount of such obligation and (B) the fair market value of such asset. The Indebtedness of any Person shall include the Indebtedness of any partnership of or joint venture in which such Person is a general partner or a joint venturer to the extent such Person would be liable therefor under applicable law or any agreement or instrument by virtue of such Person's ownership interest in or other relationship with such entity.

"Indemnified Matters" has the meaning specified therefor in Section 12.15.

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

"Indemnitees" has the meaning specified therefor in Section 12.15.

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any provision of any Debtor Relief Law.

"Intellectual Property" has the meaning specified therefor in the Security Agreement.

"Intellectual Property Contracts" means all agreements concerning Intellectual Property, including without limitation license agreements, technology consulting agreements, confidentiality agreements, co-existence agreements, consent agreements and non-assertion agreements.

"Intercompany Subordination Agreement" means an Intercompany Subordination Agreement made by the Parent and its Subsidiaries in favor of the Collateral Agent for the benefit of the Agents and the Lenders, in form and substance reasonably satisfactory to the Collateral Agent.

"Interest Period" means, with respect to each LIBOR Rate Loan, a period commencing on the date of the making of such LIBOR Rate Loan (or the continuation of a LIBOR Rate Loan or the conversion of a Reference Rate Loan to a LIBOR Rate Loan) and ending 1, 2, or 3 months thereafter; provided, however, that (a) if any Interest Period would end on a day that is not a Business Day, such Interest Period shall be extended (subject to clauses (c)-(e) below) to the next succeeding Business Day, (b) interest shall accrue at the applicable rate based upon the LIBOR Rate from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (c) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (d) with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is 1, 2 or 3 months after the date on which the Interest Period began, as applicable, and (e) the Borrower may not elect an Interest Period which will end after the Final Maturity Date.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended (or any successor statute thereto) and the regulations thereunder.

"Inventory" means, with respect to any Person, all goods and merchandise of such Person leased or held for sale or lease by such Person, including, without limitation, all raw materials, work-in-process and finished goods, and all packaging, supplies and materials of every nature used or usable in connection with the shipping, storing, advertising or sale of such goods and merchandise, whether now owned or hereafter acquired, and all such other property the sale or other disposition of which would give rise to an Account Receivable or cash.

"Investment" means, with respect to any Person, (a) any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances or other extensions of credit (excluding Accounts Receivable arising in the ordinary course of business), capital contributions or acquisitions of Indebtedness (including, any bonds, notes, debentures or other debt securities), Equity Interests, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), (b) the purchase or ownership of any futures contract or liability for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract, or (c) any investment in any other items that are or would be classified as investments on a balance sheet of such Person prepared in accordance with GAAP. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, less all returns of principal and other cash returns thereof.

"Joinder Agreement" means a Joinder Agreement, substantially in the form of Exhibit A, duly executed by a Subsidiary of a Loan Party made a party hereto pursuant to Section 7.01(b).

"Lease" means any lease of real property (other than a Capitalized Lease) to which any Loan Party or any of its Subsidiaries is a party as lessor or lessee.

"Lender" has the meaning specified therefor in the preamble hereto.

"Leverage Ratio" means, with respect to any Person and its Subsidiaries for any period, the ratio of (a) all Indebtedness described in clauses (a), (b) (provided, that Indebtedness described in such clause (b) shall exclude deferred compensation), (c), (d), (e) and (f) in the definition thereof (provided, that Indebtedness described in such clause (f) shall be excluded to with respect to any letters of credit to the extent such letters of credit are cash collateralized) of such Person and its Subsidiaries as of the end of such period to (b) Consolidated EBITDA of such Person and its Subsidiaries for such period.

"LIBOR" means, with respect to each day during each Interest Period pertaining to a LIBOR Rate Loan, the rate per annum rate appearing on Bloomberg L.P.'s (the "Service") Page BBAM1/(Official BBA USD Dollar Libor Fixings) (or on any successor or substitute page of such Service, or any successor to or substitute for such Service) two Business Days prior to the beginning of such Interest Period, in an amount approximately equal to the principal amount of the LIBOR Rate Loan to which such Interest Period is to apply and for a period of time comparable to such Interest Period, which determination shall be conclusive absent manifest error.

"LIBOR Deadline" has the meaning specified therefor in Section 2.07(a).

"LIBOR Notice" means a written notice substantially in the form of Exhibit D.

"LIBOR Option" has the meaning specified therefor in Section 2.07(a).

"LIBOR Rate" means, for each Interest Period for each LIBOR Rate Loan, the greater of (a) the rate per annum determined by the Administrative Agent (rounded upwards if necessary, to the next 1/100%) by dividing (i) LIBOR for such Interest Period by (ii) 100% minus the Reserve

Percentage and (b) 1.0%. The LIBOR Rate shall be adjusted on and as of the effective day of any change in the Reserve Percentage.

"LIBOR Rate Loan" means each portion of a Loan (other than a Reference Rate Loan) that bears interest at a rate determined by reference to the LIBOR Rate.

"Lien" means any mortgage, deed of trust, pledge, lien (statutory or otherwise), security interest, charge or other encumbrance or security or preferential arrangement of any nature, including, without limitation, any conditional sale or title retention arrangement, any Capitalized Lease and any assignment, deposit arrangement or financing lease intended as, or having the effect of, security (other than limitations on the transfer of Equity Interests imposed by applicable securities laws or any Person's Governing Documents).

"Loan" means the Term Loan or any Revolving Loan made by an Agent or a Lender to the Borrower pursuant to Article II hereof.

"Loan Account" means an account maintained hereunder by the Administrative Agent on its books of account at the Payment Office, and with respect to the Borrower, in which the Borrower will be charged with all Loans made to, and all other Obligations incurred by, the Borrower.

"Loan Document" means this Agreement, any Control Agreement, the Disbursement Letter, the Fee Letter, any Guaranty, the Intercompany Subordination Agreement, any Joinder Agreement, any Mortgage, any Security Agreement, any UCC Filing Authorization Letter, any landlord waiver, any collateral access agreement, any Perfection Certificate and any other agreement, instrument, certificate, report and other document required to be executed and delivered by a Loan Party pursuant hereto or thereto or otherwise evidencing or securing any Loan or any other Obligation.

"Loan Party." means the Borrower and any Guarantor.

"Material Adverse Effect" means a material adverse effect on any of (a) the operations, assets, liabilities or financial condition of the Loan Parties taken as a whole, (b) the ability of the Loan Parties taken as a whole to perform any of their payment obligations and other material obligations, in each case, under any Loan Document, (c) the legality, validity or enforceability against a Loan Party of this Agreement or any other Loan Document, (d) the rights and remedies of any Agent or any Lender under any Loan Document, or (e) the validity, perfection or priority of a Lien in favor of the Collateral Agent for the benefit of the Agents and the Lenders on any part of the Collateral having a fair market value in excess of \$2,500,000.

"Material Contract" means, with respect to any Person, all contracts or agreements as to which the breach, nonperformance, cancellation or failure to renew by any party thereto could reasonably be expected to have a Material Adverse Effect.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Mortgage" means a mortgage, deed of trust or deed to secure debt, in form and substance reasonably satisfactory to the Collateral Agent (or any trustee for the benefit of the Collateral

Agent), made by a Loan Party in favor of the Collateral Agent for the benefit of the Agents and the Lenders, securing the Obligations and delivered to the Collateral Agent.

"Multiemployer Plan" means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA to which any Loan Party or any of its ERISA Affiliates has contributed, or has been obligated to contribute, to at any time during the preceding 6 years.

"Net Cash Proceeds" means, with respect to, any issuance or incurrence of any Indebtedness, any Disposition or the receipt of any Extraordinary Receipts by any Person or any of its Subsidiaries, the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of such Person or such Subsidiary, in connection therewith after deducting therefrom only (a) in the case of any Disposition or the receipt of any Extraordinary Receipts consisting of insurance proceeds or condemnation awards, the amount of any Indebtedness secured by any Permitted Lien on any asset (other than Indebtedness assumed by the purchaser of such asset) which is required to be, and is, repaid in connection therewith (other than Indebtedness under this Agreement) together with the interest, fees and premiums or penalties related thereto, (b) reasonable expenses related thereto (including fees, indemnity, discounts and commissions) incurred by such Person or such Subsidiary in connection therewith, (c) transfer taxes paid to any taxing authorities by such Person or such Subsidiary in connection therewith, (d) income or gains taxes estimated in good faith to be payable by the seller (or any direct or indirect parent of the seller) as a result of any gain recognized in connection with such Disposition (or income recognized as a result of a dividend or repatriation of the proceeds of such Disposition) during the tax period the sale occurs (after taking into account any applicable tax credits or deductions and any tax sharing arrangements), (e) amounts provided as a reserve, in accordance with GAAP, against (i) any liabilities under any indemnification obligations or purchase price adjustments associated with such Disposition or (ii) any other liabilities retained by the Parent or any of its Subsidiaries associated with the properties sold in such Disposition, including pension and other post-employment benefit liabilities, liabilities related to environmental matters and liability and indemnification obligations associated with such Disposition and (f) any amount funded into an escrow established pursuant to the documents evidencing any such Disposition to secure or otherwise provide for any indemnification obligations or adjustments to the purchase price; provided, that, in any case, upon release of any such reserves or escrow, the amount released shall be considered Net Cash Proceeds, in each case, to the extent, but only to the extent, that the amounts so deducted are (i) actually paid to a Person that, except in the case of reasonable out-of-pocket expenses and taxes referred to in clause (d) above, is not an Affiliate of such Person or any of its Subsidiaries and (ii) properly attributable to such transaction or to the asset that is the subject thereof.

"New Facility" has the meaning specified therefor in Section 7.01(m).

"Non-U.S. Lender" has the meaning specified therefor in Section 2.09(d).

"Non-Wholly Owned Subsidiary" means a Subsidiary of a Person that is not a Wholly Owned Subsidiary.

"Notice of Borrowing" has the meaning specified therefor in Section 2.02(a).

"Obligations" means all present and future indebtedness, obligations, and liabilities of each Loan Party to the Agents and the Lenders arising under or in connection with this Agreement or any other Loan Document, whether or not the right of payment in respect of such claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured, unsecured, and whether or not such claim is discharged, stayed or otherwise affected by any proceeding referred to in Section 9.01. Without limiting the generality of the foregoing, the Obligations of each Loan Party under the Loan Documents include (a) the obligation (irrespective of whether a claim therefor is allowed in an Insolvency Proceeding) to pay principal, interest, charges, expenses, fees, premiums including the Applicable Premium, attorneys' fees and disbursements, indemnities and other amounts payable by such Person under the Loan Documents, and (b) the obligation of such Person to reimburse any amount in respect of any of the foregoing that any Agent (in its sole discretion) may elect to pay or advance on behalf of such Person, to the extent permitted by the terms of the Loan Documents.

"OFAC Sanctions Programs" means (a) the Requirements of Law and Executive Orders administered by OFAC, including, without limitation, Executive Order No. 13224, and (b) the list of Specially Designated Nationals and Blocked Persons administered by OFAC, in each case, as renewed, extended, amended, or replaced.

"Orad Acquisition" means the acquisition pursuant to that certain Transaction Agreement and Plan of Merger Agreement, dated as of April 12, 2015, among Avid Technology, Inc., as acquirer, Messinio Ltd., as target company, and Orad Hi-Tech Systems Ltd., as absorbing company.

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

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document.

"Parent" has the meaning specified therefor in the preamble hereto.

"Participant Register" has the meaning specified therefor in Section 12.07(i).

"Payment Office" means the Administrative Agent's office located at Cerberus Business Finance, LLC, 875 Third Avenue, New York, New York 10022, or at such other office or offices of the Administrative Agent as may be designated in writing from time to time by the Administrative Agent to the Collateral Agent and the Borrower.

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto.

"Perfection Certificate" means the certificate in form and substance reasonably satisfactory to the Collateral Agent providing information with respect to the property of the Loan Parties.

"Permitted Acquisition" means any Acquisition by a Loan Party to the extent that each of the following conditions shall have been satisfied:

(a) no Default or Event of Default shall have occurred and be continuing or would result from the consummation of the proposed Acquisition;

(b) to the extent the Acquisition will be financed in whole or in part with the proceeds of any Loan, the conditions set forth in Section 5.02 shall have been satisfied;

(c) the Borrower shall have furnished to the Agents at least 10 Business Days prior to the consummation of such Acquisition (i) an executed term sheet and/or commitment letter (setting forth in reasonable detail the terms and conditions of such Acquisition), a deal summary prepared by the borrower with respect to such Acquisition, and at the request of any Agent in the case of any Acquisition with a Purchase Price in excess of \$1,000,000, such other information and documents that any Agent may request, including, without limitation, executed counterparts of the respective agreements, instruments or other documents 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, instruments or other documents and all other material ancillary agreements, instruments or other documents to be executed or delivered in connection therewith, (ii) pro forma financial statements of the Parent and its Subsidiaries after the consummation of such Acquisition, and (iii) a certificate of the chief financial officer of the Parent, demonstrating on a pro forma basis compliance, as at the end of the most recently ended fiscal quarter period for which financial statements have been or required to be delivered hereunder, with all covenants set forth in Section 7.03 hereof after the consummation of such Acquisition;

(d) the agreements, instruments and other documents referred to in paragraph (c) above shall provide that (i) neither the Loan Parties nor any of their Subsidiaries shall, in connection with such Acquisition, assume or remain liable in respect of any Indebtedness of the Seller or Sellers, or other obligation of the Seller or Sellers (except for obligations incurred in the ordinary course of business in operating the property so acquired and necessary or desirable to the continued operation of such property and except for Permitted Indebtedness), and (ii) all property to be so acquired in connection with such Acquisition shall be free and clear of any and all Liens, except for Permitted Liens (and if any such property is subject to any Lien not permitted by this clause (ii) then concurrently with such Acquisition such Lien shall be released);

(e) such Acquisition shall be effected in such a manner so that the acquired assets or Equity Interests are owned by a Loan Party and, if effected by merger or consolidation involving a Loan Party, such Loan Party shall be the continuing or surviving Person or the continuing or surviving Person shall become a Loan Party concurrently therewith;

(f) the Borrower shall have Availability plus Qualified Cash in an amount equal to or greater than \$30,000,000 immediately after giving effect to the consummation of the proposed Acquisition;

(g) the assets being acquired or the Person whose Equity Interests are being acquired did not have negative Consolidated EBITDA during the 4 consecutive quarter period most recently concluded prior to the date of the proposed Acquisition for which financial statements have then been or were required to be delivered by the Loan Parties hereunder;

(h) the assets being acquired (other than a *de minimis* amount of assets in relation to the Loan Parties' and their Subsidiaries' total assets), or the Person whose Equity Interests are being acquired, are useful in or engaged in, as applicable, the business of the Loan Parties and their Subsidiaries or a business reasonably related thereto;

(i) the assets being acquired (other than a *de minimis* amount of assets in relation to the assets being acquired) are located within the United States or the Person whose Equity Interests are being acquired is organized in a jurisdiction located within the United States;

(j) such Acquisition shall be consensual and shall have been approved by the board of directors of the Person whose Equity Interests or assets are proposed to be acquired and shall not have been preceded by an unsolicited tender offer for such Equity Interests by, or proxy contest initiated by, Parent or any of its Subsidiaries or an Affiliate thereof;

(k) any such Subsidiary (and its equityholders) shall execute and deliver the agreements, instruments and other documents required by Section 7.01(b) as and when so required thereby; and

(l) the Purchase Price payable in respect of (i) any single Acquisition or series of related Acquisitions shall not exceed \$5,000,000 in the aggregate and (ii) all Acquisitions (including the proposed Acquisition) shall not exceed \$10,000,000 in the aggregate during the term of this Agreement.

"Permitted Agreement" means any agreement relating to a transaction not otherwise permitted under Section 7.02 to the extent such agreement (a) is a non-binding letter of intent (subject to provisions which are customarily binding in letters of intent (such as confidentiality, governing law, exclusivity, etc.)), (b) expressly requires as a condition to the effectiveness of the consummation of the transactions contemplated thereby the obtaining of any approval required under any Loan Document to effectuate such transaction or (c) requires the occurrence of the Termination Date concurrently with the consummation of the transactions contemplated thereby.

"Permitted Disposition" means:

- (a) sale of Inventory in the ordinary course of business;

- business;
- (b) licensing or sublicensing, on a non-exclusive basis, Intellectual Property rights in the ordinary course of business;
  - (c) leasing or subleasing assets in the ordinary course of business;
  - (d) (i) the lapse of Registered Intellectual Property of the Parent and its Subsidiaries to the extent not economically desirable in the conduct of their business or (ii) the abandonment of Intellectual Property rights in the ordinary course of business so long as (in each case under clauses (i) and (ii)), (A) with respect to copyrights, such copyrights are not material revenue generating copyrights, and (B) such lapse is not materially adverse to the interests of the Secured Parties;
  - (e) any involuntary loss, damage or destruction of property;
  - (f) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property;
  - (g) so long as no Event of Default has occurred and is continuing or would result therefrom, transfers of assets (i) from the Parent or any of its Subsidiaries to a Loan Party, and (ii) from any Subsidiary of the Parent that is not a Loan Party to any other Subsidiary of the Parent;
  - (h) Disposition of obsolete, surplus, uneconomical, worn-out or not useful property in the ordinary course of business;
  - (i) use and disposition of cash and Cash Equivalents in a manner not prohibited by this Agreement;
  - (j) the making of Permitted Investments and Permitted Restricted Payments and the granting of Permitted Liens and the issuance of Equity Interests (other than Disqualified Equity Interests);
  - (k) Dispositions (including discounts, cancellation or forgiveness) of Accounts Receivable in connection with the collection or compromise thereof in the ordinary course of business;
  - (l) Dispositions in connection with the unwinding of any Hedging Agreement pursuant to its terms;
  - (m) any surrender, waiver, settlement, compromise, modification or release of contractual rights in the ordinary course of business, or the settlement, release or surrender of tort or other claims of any kind; and
  - (n) Disposition of property or assets not otherwise permitted in clauses (a) through (h) above for cash in an aggregate amount not less than the fair market value of such property or assets;

provided that the Net Cash Proceeds of such Dispositions (including the proposed Disposition) (1) in the case of clauses (h) and (n) above, do not exceed \$3,000,000 in the aggregate in any Fiscal Year and (2) in the cases of clauses (h), (m) and (n) above, are paid to the Administrative Agent for the benefit of the Agents and the Lenders pursuant to the terms of Section 2.05(c)(ii) or applied as provided in Section 2.05(c)(vi).

"Permitted Indebtedness" means:

(a) any Indebtedness owing to any Agent or any Lender under this Agreement and the other Loan Documents;

(b) any other Indebtedness listed on Schedule 7.02(b), and any Permitted Refinancing Indebtedness in respect of such Indebtedness;

(c) Permitted Purchase Money Indebtedness and any Permitted Refinancing Indebtedness in respect of such Indebtedness;

(d) Permitted Intercompany Investments;

(e) Indebtedness incurred in the ordinary course of business under performance, surety, statutory, and appeal bonds or similar obligations or in respect of worker's compensation claims, and reimbursement obligations in respect of any of the foregoing;

(f) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to the Loan Parties or their Subsidiaries, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the period in which such Indebtedness is incurred and such Indebtedness is outstanding only during such period;

(g) the incurrence by any Loan Party or its Subsidiaries of Indebtedness under Hedging Agreements that are incurred for the bona fide purpose of hedging the interest rate, commodity, or foreign currency risks associated with such Loan Party's or its Subsidiaries' operations and not for speculative purposes;

(h) Indebtedness incurred in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards") or other similar cash management services, in each case, incurred in the ordinary course of business;

(i) Indebtedness under the Convertible Note Indenture and Convertible Notes (less the amount of all conversions and other reductions made after the Effective Date) and any Permitted Refinancing Indebtedness in respect thereof;

(j) Indebtedness of the Parent or any Subsidiary as an account party in respect of letters of credit in the ordinary course of business in an aggregate face amount not exceeding \$5,000,000 at any time outstanding;

(k) contingent liabilities in respect of any indemnification obligation, adjustment of purchase price, non-compete, or similar obligation of any Loan Party incurred in connection with the consummation of one or more Permitted Acquisitions;

(l) Indebtedness of a Person whose assets or Equity Interests are acquired by the Parent or any of its Subsidiaries in a Permitted Acquisition in an aggregate amount not to exceed \$1,000,000 at any one time outstanding; provided, that such Indebtedness (i) is either Permitted Purchase Money Indebtedness or a Capitalized Lease with respect to equipment or mortgage financing with respect to a Facility, (ii) was in existence prior to the date of such Permitted Acquisition, and (iii) was not incurred in connection with, or in contemplation of, such Permitted Acquisition;

(m) unsecured Indebtedness owing to the Seller that is incurred by the applicable Loan Party in connection with the consummation of one or more Permitted Acquisitions so long as (i) the aggregate principal amount for all such Indebtedness does not exceed \$2,000,000 at any one time outstanding and (ii) such Indebtedness is subordinated to the Obligations on terms and conditions reasonably acceptable to the Collateral Agent and the Required Lenders;

(n) unsecured Indebtedness, in an amount not to exceed \$1,000,000 at any one time outstanding (so long as such Indebtedness is subordinated to the Obligations on terms and conditions reasonably acceptable to the Collateral Agent and the Required Lenders), consisting of promissory notes issued to current or former directors, consultants, managers, officers and employees (or their spouses or estates) of the Parent any of its Subsidiaries to purchase or redeem Equity Interests of the Parent issued to such director, consultant, manager, officer or employee;

(o) Subordinated Indebtedness in an aggregate amount not exceeding \$5,000,000 at any time outstanding;

(p) Indebtedness owed in respect of any overdrafts and related liabilities arising from treasury, depository and cash management services or in connection with any automated clearinghouse transfers of funds, so long as such Indebtedness is repaid in full within 3 Business Days of the incurrence thereof and does not exceed \$2,000,000 at any time outstanding;

(q) Contingent Obligations in respect of Indebtedness or other Obligations incurred in the ordinary course of business, in each case permitted to be incurred pursuant to this definition;

(r) unsecured Indebtedness in an aggregate principal amount not exceeding \$2,000,000 at any time outstanding;

(s) to the extent constituting Indebtedness, deferred compensation to employees of the Borrower and its Subsidiaries incurred in the ordinary course of business; provided, that the aggregate unfunded amount thereof shall not exceed \$5,000,000 at any time outstanding; and

(t) Indebtedness consisting of the financing of insurance premiums to the extent non-recourse (other than to the insurance premiums).

"Permitted Intercompany Investments" means Investments made by (a) a Loan Party to or in another Loan Party, so long as, in the case of a loan or advance, the parties thereto are party to the Intercompany Subordination Agreement, (b) a Subsidiary that is not a Loan Party to or in another Subsidiary that is not a Loan Party, (c) a Subsidiary that is not a Loan Party to or in a Loan Party, so long as, in the case of a loan or advance, the parties thereto are party to the Intercompany Subordination Agreement, (d) any Loan Party to a Subsidiary that is not a Loan Party in an amount not to exceed \$15,000,000 in any Fiscal Year, (e) any Loan Party or Subsidiary of a Loan Party to another Loan Party and/or a Subsidiary of a Loan Party which is made with proceeds of an equity issuance by the Borrower pursuant to and in accordance with the terms hereof for purposes of a Permitted Acquisition, (f) the Borrower to or in its Subsidiaries pursuant to (i) any Specified Intercompany Agreement or (ii) such other agreement pursuant to which the Borrower has contractual obligations substantially similar to the obligations of the Borrower set forth in the Specified Intercompany Agreements and (g) a Loan Party to or in a Subsidiary that is not a Loan Party so long as (i) the aggregate amount of all such Investments made by the Loan Parties to or in Subsidiaries that are not Loan Parties does not exceed \$4,000,000 at any time outstanding, (ii) no Default or Event of Default has occurred and is continuing either before or after giving effect to such Investment, and (iii) the Borrower has Availability plus Qualified Cash of not less than \$30,000,000 after giving effect to such Investment.

"Permitted Investments" means:

(a) Investments in cash and Cash Equivalents;

(b) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business;

(c) advances made in connection with purchases of goods or services in the ordinary course of business;

(d) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the ordinary course of business or owing to any Loan Party or any of its Subsidiaries as a result of Insolvency Proceedings involving an Account Debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries;

(e) Investments existing on the date hereof, as set forth on Schedule 7.02(e) hereto, but not any increase in the amount thereof as set forth in such Schedule (unless such increase is otherwise permitted under another clause of this definition), or any other modification of the terms thereof;

(f) Indebtedness constituting an Investment to the extent permitted under Section 7.02(b);

(g) any Loan Party may capitalize or forgive any Indebtedness owed to them by any other Loan Party;

(h) any Loan Party may cancel, forgive, set-off, or accept prepayments with respect to debt or other obligations to the extent not otherwise prohibited by the terms of this Agreement;

(i) any Loan Party may hold Investments to the extent such Investments reflect an increase in the value of the Investments;

(j) the Loan Parties and their Subsidiaries may (i) acquire and hold Accounts Receivables owing to any of them if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary terms, or (ii) make lease, utility and other similar deposits or any other deposit in the ordinary course of business;

(k) loans and advances to directors, employees and officers of the Loan Parties and their Subsidiaries (i) for bona fide business purposes, in an aggregate amount not to exceed \$250,000 at any time outstanding and (ii) to the extent such loans or advances are non-cash, to purchase Equity Interests of the Parent;

(l) Investments consisting of earnest money required in connection with a Permitted Acquisition or other Permitted Investments;

(m) Permitted Intercompany Investments;

(n) Permitted Acquisitions;

(o) Investments in Hedging Agreements in the ordinary course of business and for non-speculative purposes;

(p) Investments held by a Person that becomes a Loan Party (or is merged, amalgamated or consolidated with or into a Loan Party) pursuant to a Permitted Investment after the Effective Date to the extent that such Investments (i) existed prior to such Person becoming a Loan Party and (ii) were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation;

(q) Equity Interests or other securities acquired in connection with the satisfaction or enforcement of Indebtedness or claims due or owing to a Loan Party or its Subsidiaries (in bankruptcy of customers or suppliers or otherwise outside the ordinary course of business) or as security for any such Indebtedness or claims;

(r) Capped Call Hedge Agreements entered into prior to the Effective Date in connection with the Convertible Notes and the Convertible Note Indenture; and

(s) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, any other Investments in an aggregate amount not to exceed \$1,000,000 at any time outstanding.

"Permitted Liens" means:

(a) Liens securing the Obligations;

(b) Liens for taxes, assessments and governmental charges the payment of which is not required under Section 7.01(c)(ii);

(c) Liens imposed by law, such as carriers', warehousemen's, mechanics', materialmen's and other similar Liens arising in the ordinary course of business and securing obligations (other than Indebtedness for borrowed money) that are not overdue by more than 30 days or are being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted, and a reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made therefor;

(d) Liens described on Schedule 7.02(a), provided that any such Lien shall only secure the Indebtedness that it secures on the Effective Date and any Permitted Refinancing Indebtedness in respect thereof;

(e) purchase money Liens or the interests of lessors under Capitalized Leases on equipment or other fixed or capital assets acquired, constructed, improved or held by any Loan Party or any of its Subsidiaries in the ordinary course of its business to secure Permitted Purchase Money Indebtedness so long as such Lien only (i) attaches to such property and any accessions and/or improvements thereto and the proceeds thereof (ii) secures the Indebtedness that was incurred to acquire such property or any Permitted Refinancing Indebtedness in respect thereof; it being understood and agreed that individual financings by any lender permitted by this clause (e) may be cross-collateralized to other financings permitted under this clause (e) provided by such lender or its Affiliates;

(f) deposits and pledges of cash securing (i) obligations incurred in respect of workers' compensation, unemployment insurance and other general liability insurance obligations, other social security laws and regulations or other forms of governmental insurance or benefits, (ii) the performance of bids, tenders, leases, contracts (other than for the payment of money) and statutory obligations or (iii) obligations on surety bonds, appeal bonds, performance bonds and other obligations of similar nature but only to the extent such deposits or pledges are made or otherwise arise in the ordinary course of business and secure obligations not past due;

(g) with respect to any Facility or other real property, easements, zoning restrictions and similar encumbrances on real property and minor irregularities in the title thereto that (i) do not

(A) secure obligations for the payment of money or (B) materially impair the value of such property or its use by any Loan Party or any of its Subsidiaries in the normal conduct of such Person's business or (ii) are disclosed in the applicable Title Insurance Policy provided to and accepted by the Collateral Agent;

(h) Liens of landlords and mortgagees of landlords (i) arising by statute or under any lease or related Contractual Obligation entered into in the ordinary course of business, (ii) on fixtures and movable tangible property (and, if set forth by statute, other property) located on the real property leased or subleased from such landlord, or (iii) for amounts not yet due or that are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves or other appropriate provisions are maintained on the books of such Person in accordance with GAAP;

(i) the title and interest of a licensor, lessor or sublessor in and to property licensed, leased or subleased (other than through a Capitalized Lease), in each case extending only to such property;

(j) non-exclusive licenses of Intellectual Property rights in the ordinary course of business;

(k) judgment liens (other than for the payment of taxes, assessments or other governmental charges) securing judgments and other proceedings not constituting an Event of Default under Section 9.01(j);

(l) rights of set-off or bankers' liens or other similar liens upon deposits of cash or Cash Equivalents in favor of banks, other depository institutions or securities intermediaries, solely to the extent incurred in connection with the maintenance of such deposit accounts or securities accounts and related cash management services in the ordinary course of business;

(m) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness;

(n) Liens on cash securing Indebtedness under letters of credit permitted under clause (j) of the definition of Permitted Indebtedness; provided that, in each case, the aggregate amount of such cash does not exceed 105% of the Indebtedness being secured;

(o) Liens assumed by the Parent and its Subsidiaries in connection with a Permitted Acquisition that secure Indebtedness permitted by clause (l) of the definition of Permitted Indebtedness;

(p) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(q) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(r) Liens attaching solely to cash earnest money deposits made by any Loan Party or its Subsidiaries or escrowed purchase price in connection with Permitted Investments or Permitted Dispositions;

(s) Liens incurred by any Loan Party or their Subsidiaries relating to non-assignment provisions under service contracts;

(t) Liens consisting of deposits to secure statutory obligations or public utility agreements;

(u) Liens consisting of customary restrictions in agreements for sale of assets pursuant to a Permitted Disposition during an interim period prior to the closing of the sale of such assets pursuant to a Permitted Disposition;

(v) Liens arising by operation of Article 2 of the UCC in favor of a reclaiming seller of goods or buyer of goods; and

(w) other Liens as to which the aggregate outstanding amount of the obligations secured thereby at any one time does not exceed \$1,000,000.

"Permitted Purchase Money Indebtedness" means, as of any date of determination, Indebtedness (other than the Obligations, but including Capitalized Lease Obligations) incurred to finance the acquisition of any fixed assets or software secured by a Lien permitted under clause (e) of the definition of "Permitted Liens"; provided that (a) such Indebtedness is incurred within 90 days after such acquisition, (b) such Indebtedness when incurred shall not exceed the purchase price of the asset financed and (c) the aggregate principal amount of all such Indebtedness shall not exceed \$2,000,000 at any time outstanding.

"Permitted Refinancing Indebtedness" means the extension of maturity, refinancing, exchange, replacement, substitution or modification of Indebtedness so long as:

(a) after giving effect to such transaction, the amount of such Indebtedness is not greater than the principal amount of Indebtedness outstanding immediately prior to such transaction (other than by the amount of premiums paid thereon, interest and the fees and expenses incurred in connection therewith and by the amount of unfunded commitments with respect thereto);

(b) such transaction does not result in a shortening of the average weighted maturity (measured as of the date of such transaction) of the Indebtedness subject thereto;

(c) if the Indebtedness that is refinanced, renewed, or extended was subordinated in right of payment to the Obligations, then the terms and conditions of the refinancing, renewal, or extension must include subordination terms and conditions that are at least as favorable to the Agents

and the Lenders as a whole as those that were applicable to the refinanced, renewed, or extended Indebtedness; and

(d) the Indebtedness that is extended, refinanced, replaced, substituted or modified is not recourse to any Loan Party or any of its Subsidiaries that is liable on account of the obligations other than those Persons which were obligated with respect to the Indebtedness that was refinanced, extended, replaced, substituted or modified.

"Permitted Restricted Payments" means any of the following Restricted Payments made by:

(a) any Subsidiary of the Borrower to the Borrower or any other Subsidiary of the Borrower, and

(b) the Parent to pay dividends in the form of Qualified Equity Interests,

(c) each Loan Party and its Subsidiaries may make distributions to former employees, officers, or directors of the Loan Parties or their Subsidiaries (or any spouses, ex-spouses, or estates of any of the foregoing) on account of redemptions of Equity Interests of the Borrower held by such Persons so long as (i) the Loan Parties shall have Availability plus Qualified Cash in an amount equal to or greater than \$30,000,000 and (ii) no Default or Event of Default shall have occurred and be continuing; provided, however, that, the aggregate amount of such redemptions made by the Loan Parties and their Subsidiaries during the term of this Agreement does not exceed \$1,000,000 in the aggregate for all former employees, officers or directors of the Loan Parties or their Subsidiaries (or any spouses, ex-spouses, or estates of any of the foregoing);

(d) each Loan Party and its Subsidiaries may make distributions to former employees, officers, or directors of the Loan Parties or their Subsidiaries (or any spouses, ex-spouses, or estates of any of the foregoing), solely in the form of forgiveness of Indebtedness of such Persons owing to the Loan Parties or their Subsidiaries on account of repurchases of the Equity Interests of the Borrower held by such Persons so long as (i) such Indebtedness was incurred by such Persons solely to acquire Equity Interests of the Borrower and (ii) (A) the Loan Parties shall have Availability plus Qualified Cash in an amount equal to or greater than \$30,000,000 and (B) no Default or Event of Default shall have occurred and be continuing;

(e) any Loan Party may make Restricted Payments to any other Loan Party and any Subsidiary of any Loan Party (that is not a Loan Party) may make Restricted Payments to any other Subsidiary of any Loan Party or to any Loan Party;

(f) the Borrower may make Restricted Payments and repurchase Equity Interests issued under stock option plans (or other incentive plans or compensation arrangements) approved by its Board of Directors not to exceed \$1,000,000 in the aggregate in any Fiscal Year so long as (i) the Loan Parties shall have Availability plus Qualified Cash in an amount equal to or greater than \$30,000,000 and (ii) no Default or Event of Default shall have occurred and be continuing; and

(g) the Loan Parties and their Subsidiaries may enter into the Capped Call Hedge Agreements and acquire common stock of the Borrower from the Capped Call Counterparty upon exercise thereof, provided that the Loan Parties shall not pay any consideration for such stock or under the Capped Call Hedge Agreement after the Effective Date other than ordinary course fees and expenses due under such Capped Call Hedge Agreements.

"Permitted Specified Liens" means Permitted Liens described in clauses (a), (b) and (c) of the definition of Permitted Liens, and, solely in the case of Section 7.01(b)(i), including clauses (g), (h) and (i) of the definition of Permitted Liens.

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

"Petty Cash Accounts" means Cash Management Accounts with deposits at any time in an aggregate amount not in excess of \$25,000 for any one account and \$100,000 in the aggregate for all such accounts.

"Plan" means any Employee Plan or Multiemployer Plan.

"Post-Default Rate" means a rate of interest per annum equal to the rate of interest otherwise in effect from time to time pursuant to the terms of this Agreement plus 2.0%, or, if a rate of interest is not otherwise in effect, interest at the highest rate specified herein for any Loan then outstanding prior to an Event of Default plus 2.0%.

"Pro Rata Share" means, with respect to:

(a) (i) a Lender's obligation to make Revolving Loans and the right to receive payments of interest, fees, and principal with respect thereto, the percentage obtained by dividing (A) such Lender's Revolving Credit Commitment, by (B) the Total Revolving Credit Commitment, provided, that, if the Total Revolving Credit Commitment has been reduced to zero, the numerator shall be the aggregate unpaid principal amount of such Lender's Revolving Loans (including Collateral Agent Advances) and the denominator shall be the aggregate unpaid principal amount of all Revolving Loans (including Collateral Agent Advances),

(b) a Lender's obligation to make the Term Loan and the right to receive payments of interest, fees, and principal with respect thereto, the percentage obtained by dividing (i) such Lender's Term Loan Commitment, by (ii) the Total Term Loan Commitment, provided that if the Total Term Loan Commitment has been reduced to zero, the numerator shall be the aggregate unpaid principal amount of such Lender's portion of the Term Loan and the denominator shall be the aggregate unpaid principal amount of the Term Loan, and

(c) all other matters (including, without limitation, the indemnification obligations arising under Section 10.05), the percentage obtained by dividing (i) the sum of such Lender's Revolving Credit Commitment and the unpaid principal amount of such Lender's portion of the Term Loan, by (ii) the sum of the Total Revolving Credit Commitment and the aggregate unpaid principal

amount of the Term Loan, provided, that, if such Lender's Revolving Credit Commitment shall have been reduced to zero, such Lender's Revolving Credit Commitment shall be deemed to be the aggregate unpaid principal amount of such Lender's Revolving Loans (including Collateral Agent Advances) and if the Total Revolving Credit Commitment shall have been reduced to zero, the Total Revolving Credit Commitment shall be deemed to be the aggregate unpaid principal amount of all Revolving Loans (including Collateral Agent Advances).

"Projections" means financial projections of the Parent and its Subsidiaries delivered pursuant to Section 6.01(g)(ii) and from time to time pursuant to Section 7.01(a)(vii).

"Purchase Price" means, with respect to any Acquisition, an amount equal to the sum of (a) the aggregate consideration, whether cash, property or securities (including, without limitation, the fair market value of any Equity Interests of any Loan Party or any of its Subsidiaries issued in connection with such Acquisition), paid or delivered by a Loan Party or any of its Subsidiaries (whether as initial consideration or through the payment or disposition of deferred consideration, including, without limitation, in the form of seller financing, royalty payments, payments allocated towards non-compete covenants and payments to principals for consulting services or other similar payments) in connection with such Acquisition, plus (b) the aggregate amount of liabilities of the acquired business (net of current assets of the acquired business) that would be reflected on a balance sheet (if such were to be prepared) of the Parent and its Subsidiaries after giving effect to such Acquisition.

"Qualified Cash" means, as of any date of determination, the aggregate amount of unrestricted cash on-hand of the Loan Parties maintained in deposit accounts in the name of a Loan Party in the United States as of such date, which deposit accounts are subject to Control Agreements.

"Qualified Equity Interests" means, with respect to any Person, all Equity Interests of such Person that are not Disqualified Equity Interests.

"Real Property Deliverables" means each of the following agreements, instruments and other documents in respect of each fee-owned Facility:

(a) a Mortgage duly executed by the applicable Loan Party,

(b) evidence of the recording of each Mortgage in such office or offices as may be necessary or, in the reasonable opinion of the Collateral Agent, desirable to perfect the Lien purported to be created thereby or to otherwise protect the rights of the Collateral Agent and the Lenders thereunder;

(c) a Title Insurance Policy with respect to each Mortgage;

(d) a current ALTA survey and a surveyor's certificate or, to the extent that the mortgagee's Title Insurance Policy delivered in connection therewith meets the requirements set forth in the definition thereof, an existing ALTA Survey, in form and substance reasonably satisfactory to the Collateral Agent, certified to the Collateral Agent and to the issuer of the Title Insurance Policy with respect thereto by a professional surveyor licensed in the state in which such Facility is located;

(e) a copy of any certificates of occupancy issued with respect to each Facility and, if a zoning endorsement to the Title Policy is not available in the jurisdiction in which the Facility is located, a letter issued by the applicable Governmental Authority evidencing such Facility's compliance with all applicable zoning laws, except where such failure to so comply could not reasonably be expected to materially impair the value of such property or its use by any Loan Party in the normal conduct of such Person's business;

(f) if requested by Collateral Agent, an opinion of counsel, reasonably satisfactory to the Collateral Agent, in the state where such Facility is located with respect to the enforceability of the Mortgage to be recorded and such other matters as the Collateral Agent may reasonably request;

(g) a reasonably satisfactory ASTM 1527-00 Phase I Environmental Site Assessment ("Phase I ESA") (provided by the Borrower to the Collateral Agent and if recommended in the Phase I ESA and, if reasonably requested by the Collateral Agent based upon the results of such Phase I ESA and after consultation with the Parent, an ASTM 1527-00 Phase II Environmental Site Assessment) of each Facility, in form and substance and by an independent firm reasonably satisfactory to the Collateral Agent; and

(h) such other agreements, instruments and other documents as the Collateral Agent may reasonably require.

"Recipient" means any Agent and any Lender, as applicable.

"Reference Rate" means, for any period, the greatest of (a) 3.25% per annum, (b) the Federal Funds Rate plus 0.50% per annum, (c) the LIBOR Rate (which rate shall be calculated based upon an Interest Period of 1 month and shall be determined on a daily basis) plus 1.00% per annum, and (d) the rate last quoted by The Wall Street Journal as the "Prime Rate" in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Reference Rate shall be effective from and including the date such change is publicly announced as being effective.

"Reference Rate Loan" means each portion of a Loan that bears interest at a rate determined by reference to the Reference Rate.

"Register" has the meaning specified therefor in Section 12.07(f).

"Registered Intellectual Property" means Intellectual Property that is issued, registered, renewed or the subject of a pending application.

"Registered Loans" has the meaning specified therefor in Section 12.07(f).

"Regulation T", "Regulation U" and "Regulation X" mean, respectively, Regulations T, U and X of the Board or any successor, as the same may be amended or supplemented from time to time.

"Related Fund" means, with respect to any Person, an Affiliate of such Person, or a fund or account managed by such Person or an Affiliate of such Person.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing of any Hazardous Material (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Material) into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Materials through or in the ambient air, soil, surface or ground water, or property.

"Remedial Action" means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate or in any other way address Hazardous Materials in the indoor or outdoor environment; (b) prevent or minimize a Release or threatened Release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; or (c) perform pre-remedial studies and investigations and post-remedial operation and maintenance activities.

"Replacement Lender" has the meaning specified therefor in Section 12.02(b).

"Reportable Event" means an event described in Section 4043 of ERISA other than an event with respect to which the notice requirement has been waived by the PBGC.

"Required Lenders" means Lenders whose Pro Rata Shares (calculated in accordance with clause (c) of the definition thereof) aggregate at least 50.1%; provided, that the Commitments and the Loans of any Defaulting Lender shall be disregarded in the determination of Required Lenders.

"Requirements of Law" means, with respect to any Person, collectively, the common law and all federal, state, provincial, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Reserve Percentage" means, on any day, for any Lender, the maximum percentage prescribed by the Board (or any successor Governmental Authority) for determining the reserve requirements (including any basic, supplemental, marginal, or emergency reserves) that are in effect on such date with respect to eurocurrency funding (currently referred to as "eurocurrency liabilities") of that Lender, but so long as such Lender is not required or directed under applicable regulations to maintain such reserves, the Reserve Percentage shall be zero.

"Restricted Payment" means (a) the declaration or payment of any dividend or other distribution, direct or indirect, on account of any Equity Interests of any Loan Party or any of its Subsidiaries, now or hereafter outstanding, (b) the making of any repurchase, redemption, retirement, defeasance, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interests of any Loan Party or any direct or indirect parent of any Loan Party, now or hereafter outstanding, (c) the making of any payment to retire, or to obtain the surrender of, any outstanding warrants, options or other rights for the purchase or acquisition of shares of any class of Equity Interests of any Loan Party, now or hereafter outstanding, (d) the return of any capital contribution or equity investment to any shareholders or other equity holders of any Loan Party or any of its Subsidiaries, or make any other distribution of property, assets, shares of Equity Interests, warrants, rights, options, obligations or securities thereto as such or (e) the payment of any management, consulting, monitoring or advisory fees or any other fees or expenses (including the reimbursement thereof by any Loan Party or any of its Subsidiaries) pursuant to any management, consulting, monitoring, advisory or other services agreement to any of the shareholders or other equityholders of any Loan Party or any of its Subsidiaries or other Affiliates, or to any other Subsidiaries or Affiliates of any Loan Party. For the avoidance of doubt, a net exercise of options or restricted stock unit awards with the payment of any exercise price or the settlement of any taxes with respect thereto being accomplished solely by surrendering the right to certain shares shall not under any circumstances be considered to be a Restricted Payment.

"Revolving Credit Commitment" means, with respect to each Lender, the commitment of such Lender to make Revolving Loans to the Borrower in the amount set forth opposite such Lender's name in Schedule 1.01(A) hereto or in the Assignment and Acceptance pursuant to which such Lender became a Lender under this Agreement, as such amount may be terminated or reduced from time to time in accordance with the terms of this Agreement.

"Revolving Loan" means a loan made by a Lender to the Borrower pursuant to Section 2.01(a)(i).

"Revolving Loan Lender" means a Lender with a Revolving Credit Commitment or a Revolving Loan.

"Sale and Leaseback Transaction" means, with respect to the Parent or any of its Subsidiaries, any arrangement, directly or indirectly, with any Person whereby the Parent or any of its Subsidiaries shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

"SEC" means the Securities and Exchange Commission or any other similar or successor agency of the Federal government administering the Securities Act.

"Secured Party" means any Agent and any Lender.

"Securities Act" means the Securities Act of 1933, as amended, or any similar Federal statute, and the rules and regulations of the SEC thereunder, all as the same shall be in effect from time to time.

"Securitization" has the meaning specified therefor in Section 12.07(l).

"Security Agreement" means a Pledge and Security Agreement, in form and substance reasonably satisfactory to the Collateral Agent, made by a Loan Party in favor of the Collateral Agent for the benefit of the Secured Parties securing the Obligations.

"Seller" means any Person that sells Equity Interests or other property or assets to a Loan Party or a Subsidiary of a Loan Party in a Permitted Acquisition.

"Senior Officer" means, with respect to any Loan Party, the Chief Executive Officer, the Chief Financial Officer, the President, a Vice President of Finance or the Controller.

"Settlement Period" has the meaning specified therefor in Section 2.02(d)(i) hereof.

"Significant Subsidiary" means each Subsidiary of the Parent that:

(a) is designated with an asterisk on Schedule 6.01(e);

(b) accounted for at least 2.5% of consolidated revenues of the Parent and its Subsidiaries for the four fiscal quarters of the Parent ending on the last day of the last fiscal quarter of the Parent immediately preceding the date as of which any such determination is made (after elimination of the intercompany debt and revenues); or

(c) has assets which represent at least 2.5% of the consolidated assets of the Parent and its Subsidiaries as at the last day of the last fiscal quarter of the Parent immediately preceding the date as of which any such determination is made (after elimination of the intercompany debt and revenues);

provided, that all Subsidiaries of the Parent that are not Significant Subsidiaries shall not in the aggregate account more than (i) 5% of consolidated revenues of the Parent and its Subsidiaries for the four fiscal quarters of the Parent ending on the last day of the last fiscal quarter of the Parent immediately preceding the date as of which any such determination is made (after elimination of the intercompany debt and revenues) or (ii) have assets which represent more than 5% of the consolidated assets of the Parent and its Subsidiaries as at the last day of the last fiscal quarter of the Parent immediately preceding the date as of which any such determination is made (after elimination of the intercompany debt and revenues).

"Solvent" means, with respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person and its Subsidiaries, on a consolidated basis, is not less than the total amount of the liabilities of such Person and its Subsidiaries, on a consolidated basis, (b) the present fair salable value of the assets of such Person and its Subsidiaries, on a consolidated basis, is not less than the amount that will be required to pay the probable liability of such Person and its Subsidiaries, on a consolidated basis, on its existing debts as they become absolute and matured, (c) such Person and its Subsidiaries, on a consolidated basis are able to pay their debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (d) such Person and its Subsidiaries, on a consolidated basis, do not intend to, and do not believe that they will, incur debts or liabilities beyond such Person's and its Subsidiaries, on a

consolidated basis, ability to pay as such debts and liabilities mature, and (e) such Person and its Subsidiaries, on a consolidated basis, are not engaged in business or a transaction, and are not about to engage in business or a transaction, for which such Person's and its Subsidiaries, on a consolidated basis, property would constitute unreasonably small capital.

"Specified Intercompany Agreements" means (a) the Amended and Restated Cost Sharing Agreement, dated as of June 1, 2009, between the Parent and Avid Technology International B.V. (b) the Intercompany Service Agreement, dated as of January 1, 2009, between the Parent and Avid Technology International B.V., (c) the Audio Products License Agreement, dated as of June 29, 2010, between the Parent and Avid Technology International B.V., (d) the Toiya/Commissionaire Agreement, dated as of January 1, 2003, between the Parent and Avid Japan K.K., (e) the Intercompany Service Agreement, dated as of January 1, 2002, between the Parent and Avid Technology (Australia) Pty Ltd., and (f) the Intercompany Research and Development and Other Services Agreement, dated as of August 3, 1998, between Avid Technology Inc. and Softimage, Inc., in each case as amended and/or modified from time to time prior to the Effective Date.

"Specified Intercompany Loans" means the notes, loan agreements and other instruments evidencing Indebtedness described on Schedule 1.01(D).

"Standard & Poor's" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

"Stock Repurchase Account" means an account of the Borrower held at a financial institution located in the United States exclusively comprised of funds designated to be used solely in connection with the Stock Repurchase Program.

"Stock Repurchase Program" means the program authorized by the Board of Directors of the Borrower to repurchase common stock of the Borrower, from time to time, on the open market or otherwise.

"Subordinated Indebtedness" means Indebtedness of any Loan Party the terms of which (including, without limitation, payment terms, interest rates, covenants, remedies, defaults and other material terms) are reasonably satisfactory to the Collateral Agent and the Required Lenders and which has been expressly subordinated in right of payment to all Indebtedness of such Loan Party under the Loan Documents (a) by the execution and delivery of a subordination agreement, in form and substance reasonably satisfactory to the Collateral Agent and the Required Lenders, or (b) otherwise on terms and conditions reasonably satisfactory to the Collateral Agent and the Required Lenders; provided, however, that the term "Subordinated Indebtedness" shall not include any subordinated intercompany Indebtedness among the Loan Parties and/or their Subsidiaries which is permitted to be incurred pursuant to the definition of Permitted Indebtedness and which is made in the form of subordinated intercompany notes issued pursuant to, and subject to the terms and provisions of, the Intercompany Subordination Agreement.

"Subsidiary." means, with respect to any Person at any date, any corporation, limited or general partnership, limited liability company, trust, estate, association, joint venture or other business entity (a) the accounts of which would be consolidated with those of such Person in such

Person's consolidated financial statements if such financial statements were prepared in accordance with GAAP or (b) of which more than 50% of (i) the outstanding Equity Interests having (in the absence of contingencies) ordinary voting power to elect a majority of the Board of Directors of such Person, (ii) in the case of a partnership or limited liability company, the interest in the capital or profits of such partnership or limited liability company or (iii) in the case of a trust, estate, association, joint venture or other entity, the beneficial interest in such trust, estate, association or other entity business is, at the time of determination, owned or controlled directly or indirectly through one or more intermediaries, by such Person. References to a Subsidiary shall mean a Subsidiary of the Parent unless the context expressly provides otherwise.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Termination Date" means the first date on which all of the Obligations other than Contingent Indemnity Obligations are paid in full in cash and the Commitments of the Lenders are terminated.

"Termination Event" means (a) a Reportable Event with respect to any Employee Plan, (b) any event that causes any Loan Party or any of its ERISA Affiliates to incur material liability under Section 409, 502(i), 502(l), 515, 4062, 4063, 4064, 4069, 4201, 4204 or 4212 of ERISA or Section 4971 or 4975 of the Internal Revenue Code, (c) the filing of a notice of intent to terminate an Employee Plan or the treatment of an Employee Plan amendment as a termination under Section 4041 of ERISA, (d) the institution of proceedings by the PBGC to terminate an Employee Plan, or (e) any other event or condition that could reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Employee Plan.

"Term Loan" means, collectively, the loans made by the Term Loan Lenders to the Borrower on the Effective Date pursuant to Section 2.01(a)(ii).

"Term Loan Commitment" means, with respect to each Lender, the commitment of such Lender to make the Term Loan to the Borrower in the amount set forth in Schedule 1.01(A) hereto or in the Assignment and Acceptance pursuant to which such Lender became a Lender under this Agreement, as the same may be terminated or reduced from time to time in accordance with the terms of this Agreement.

"Term Loan Lender" means a Lender with a Term Loan Commitment or a Term Loan.

"Title Insurance Policy" means a mortgagee's loan policy, in form reasonably satisfactory to the Collateral Agent, together with all endorsements made from time to time thereto, issued to the Collateral Agent by or on behalf of a title insurance company selected by the Borrower and reasonably satisfactory to the Collateral Agent, insuring the Lien created by a Mortgage in an amount (not in excess of the fair market value of the Facility subject to such Mortgage) and on terms and with such customary (and available at commercially reasonable rates) endorsements reasonably satisfactory to the Collateral Agent, delivered to the Collateral Agent.

"Total Commitment" means the sum of the Total Revolving Credit Commitment and the Total Term Loan Commitment.

"Total Revolving Credit Commitment" means the sum of the amounts of the Lenders' Revolving Credit Commitments, which amount is \$5,000,000 as of the Effective Date.

"Total Term Loan Commitment" means the sum of the amounts of the Lenders' Term Loan Commitments, which amount is \$100,000,000 as of the Effective Date.

"Transferee" has the meaning specified therefor in Section 2.09.

"UCC Filing Authorization Letter" means a letter duly executed by each Loan Party authorizing the Collateral Agent to file appropriate financing statements on Form UCC-1 without the signature of such Loan Party in such office or offices as may be necessary or, in the opinion of the Collateral Agent, desirable to perfect the security interests purported to be created by each Security Agreement and each Mortgage.

"Uniform Commercial Code" or "UCC" has the meaning specified therefor in Section 1.04.

"Unused Line Fee" has the meaning specified therefor in Section 2.06(a).

"USA PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001 (Title III of Pub. L. 107-56, Oct. 26, 2001) as amended by the USA Patriot Improvement and Reauthorization Act of 2005 (Pub. L. 109-177, March 9, 2006) and as the same may have been or may be further renewed, extended, amended, or replaced.

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

"WARN" has the meaning specified therefor in Section 6.01(p).

"Wholly Owned Subsidiary" means any Subsidiary of a Person all of the Equity Interests (other than in the case of a corporation, directors' qualifying shares or shares required to be held by a resident of the jurisdiction of organization) are controlled by such Person or one or more other Subsidiaries of such Person or by such Person and one or more other Subsidiaries of such Person.

"Withholding Agent" means any Loan Party and the Administrative Agent.

"Working Capital" means, at any date of determination thereof, (a) the sum, for any Person and its Subsidiaries, of (i) the unpaid face amount of all Accounts Receivable of such Person and its Subsidiaries as at such date of determination, plus (ii) the aggregate amount of prepaid expenses and other current assets (including inventories) of such Person and its Subsidiaries as at such date of determination (other than cash, Cash Equivalents and any Indebtedness owing to such Person or any of its Subsidiaries by Affiliates of such Person), minus (b) the sum, for such Person and its Subsidiaries, of (i) the unpaid amount of all accounts payable of such Person and its Subsidiaries as at such date

of determination, plus (ii) the aggregate amount of all accrued expenses and deferred revenues (whether classified as current or long-term) of such Person and its Subsidiaries as at such date of determination (other than the current portion of long-term debt and all accrued interest and taxes).

Section 1.02 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The 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, 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 and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules 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 right or interest in or to assets and properties of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

Section 1.03 Certain Matters of Construction. References in this Agreement to "determination" by any Agent include good faith estimates by such Agent (in the case of quantitative determinations) and good faith beliefs by such Agent (in the case of qualitative determinations). A Default or Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or, in the case of a Default, is cured within any period of cure expressly provided for in this Agreement; and an Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by the Required Lenders. Any Lien referred to in this Agreement or any other Loan Document as having been created in favor of any Agent, any agreement entered into by any Agent pursuant to this Agreement or any other Loan Document, any payment made by or to or funds received by any Agent pursuant to or as contemplated by this Agreement or any other Loan Document, or any act taken or omitted to be taken by any Agent, shall, unless otherwise expressly provided, be created, entered into, made or received, or taken or omitted, for the benefit or account of the Agents and the Lenders. Wherever the phrase "to the knowledge of any Loan Party" or words of similar import relating to the knowledge or the awareness of any Loan Party are used in this Agreement or any other Loan Document, such phrase shall mean and refer to the actual knowledge of a Senior Officer. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or otherwise within the limitations of, another covenant shall not avoid the occurrence of a default if such action is taken or condition exists. In addition, all representations and warranties hereunder shall be given independent effect so that if a particular representation or warranty proves to be incorrect or is breached, the fact that another representation or warranty concerning the same or similar subject matter is correct or is not breached will not affect the incorrectness of a breach of a representation or warranty hereunder.

Section 1.04 Accounting and Other Terms.

(a) Unless otherwise expressly provided herein, each accounting term used herein shall have the meaning given it under GAAP. For purposes of determining compliance with any incurrence or expenditure tests set forth in Section 7.01, Section 7.02 and Section 7.03, any amounts so incurred or expended (to the extent incurred or expended in a currency other than Dollars) shall be converted into Dollars on the basis of the exchange rates (as shown on the Bloomberg currency page for such currency or, if the same does not provide such exchange rate, by reference to such other publicly available service for displaying exchange rates as may be reasonably selected by the Agents or, in the event no such service is selected, on such other basis as is reasonably satisfactory to the Agents) as in effect on the date of such incurrence or expenditure under any provision of any such Section that has an aggregate Dollar limitation provided for therein (and to the extent the respective incurrence or expenditure test regulates the aggregate amount outstanding at any time and it is expressed in terms of Dollars, all outstanding amounts originally incurred or spent in currencies other than Dollars shall be converted into Dollars on the basis of the exchange rates (as shown on the Bloomberg currency page for such currency or, if the same does not provide such exchange rate, by reference to such other publicly available service for displaying exchange rates as may be reasonably selected by the Agents or, in the event no such service is selected, on such other basis as is reasonably satisfactory to the Agents) as in effect on the date of any new incurrence or expenditures made under any provision of any such Section that regulates the Dollar amount outstanding at any time). Notwithstanding the foregoing, (i) with respect to the accounting for leases as either operating leases or capital leases and the impact of such accounting in accordance with FASB ASC 840 (or any other similar promulgation or methodology under GAAP with respect to the same subject matter as FASB ASC 840) on the definitions and covenants herein, GAAP as in effect on the Effective Date shall be applied and (ii) for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Parent and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) All terms used in this Agreement which are defined in Article 8 or Article 9 of the Uniform Commercial Code as in effect from time to time in the State of New York (the "Uniform Commercial Code" or the "UCC") and which are not otherwise defined herein shall have the same meanings herein as set forth therein, provided that terms used herein which are defined in the Uniform Commercial Code as in effect in the State of New York on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as any Agent may otherwise determine.

Section 1.05 Time References. Unless otherwise indicated herein, all references to time of day refer to Eastern Standard Time or Eastern daylight saving time, as in effect in New York City on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding"; provided, however, that with respect to a computation of fees or interest payable to any Secured Party, such period shall in any event consist of at least one full day.

## ARTICLE II

### THE LOANS

Section 2.01 Commitments. (a) Subject to the terms and conditions and relying upon the representations and warranties herein set forth:

(i) each Revolving Loan Lender severally agrees to make Revolving Loans to the Borrower at any time and from time to time during the term of this Agreement, in an aggregate principal amount of Revolving Loans at any time outstanding not to exceed the amount of such Lender's Revolving Credit Commitment; and

(ii) each Term Loan Lender severally agrees to make the Term Loan to the Borrower on the Effective Date, in an aggregate principal amount not to exceed the amount of such Lender's Term Loan Commitment.

(b) Notwithstanding the foregoing:

(i) The aggregate principal amount of Revolving Loans outstanding at any time to the Borrower shall not exceed the Total Revolving Credit Commitment. The Revolving Credit Commitment of each Lender shall automatically and permanently be reduced to zero on the Final Maturity Date. Within the foregoing limits, the Borrower may borrow, repay and reborrow, the Revolving Loans on or after the Effective Date and prior to the Final Maturity Date, subject to the terms, provisions and limitations set forth herein. No Revolving Loans shall be advanced on the Effective Date.

(ii) The aggregate principal amount of the Term Loan made on the Effective Date shall not exceed the Total Term Loan Commitment. Any principal amount of the Term Loan which is repaid or prepaid may not be reborrowed.

Section 2.02 Making the Loans. (a) The Borrower shall give the Administrative Agent prior telephonic or email notice (immediately confirmed in writing, in substantially the form of Exhibit C hereto (a "Notice of Borrowing")), not later than 12:00 noon (New York City time) on the date which is 1 Business Day in the case of Revolving Loans which are Reference Rate Loans and otherwise 3 Business Days prior to the date of the proposed Loan (or such shorter period as the Administrative Agent is willing to accommodate from time to time, but in no event later than 12:00 noon (New York City time) on the borrowing date of the proposed Loan). Such Notice of Borrowing shall be irrevocable and shall specify (i) the principal amount of the proposed Loan, (ii) whether such Loan is requested to be a Revolving Loan (it being understood that no Revolving Loans shall be advanced on the Effective Date) or the Term Loan, (iii) whether the Loan is requested to be a Reference Rate Loan or a LIBOR Rate Loan and, in the case of a LIBOR Rate Loan, the initial Interest Period with respect thereto and (iv) the proposed borrowing date, which must be a Business Day, and, with respect to the Term Loan, must be the Effective Date. The Administrative Agent and the Lenders may act without liability upon the basis of written, telecopied or telephonic notice believed by the Administrative Agent in good faith to be from the Borrower (or from any Authorized Officer thereof

designated in writing purportedly from the Borrower to the Administrative Agent). The Borrower hereby waives the right to dispute the Administrative Agent's record of the terms of any such telephonic Notice of Borrowing. The Administrative Agent and each Lender shall be entitled to rely conclusively on any Authorized Officer's authority to request a Loan on behalf of the Borrower until the Administrative Agent receives written notice to the contrary. The Administrative Agent and the Lenders shall have no duty to verify the authenticity of the signature appearing on any written Notice of Borrowing.

(b) Each Notice of Borrowing pursuant to this Section 2.02 shall be irrevocable and the Borrower shall be bound to make a borrowing in accordance therewith. Each Revolving Loan shall be made in a minimum amount of \$500,000 and shall be in an integral multiple of \$100,000.

(c) (i) Except as otherwise provided in this Section 2.02(c), all Loans under this Agreement shall be made by the Lenders simultaneously and proportionately to their Pro Rata Shares of the Total Revolving Credit Commitment or the Total Term Loan Commitment, as the case may be, it being understood that no Lender shall be responsible for any default by any other Lender in that other Lender's obligations to make a Loan requested hereunder, nor shall the Commitment of any Lender be increased or decreased as a result of the default by any other Lender in that other Lender's obligation to make a Loan requested hereunder, and each Lender shall be obligated to make the Loans required to be made by it by the terms of this Agreement regardless of the failure by any other Lender.

(ii) Notwithstanding any other provision of this Agreement, and in order to reduce the number of fund transfers among the Borrower, the Agents and the Lenders, the Borrower, the Agents and the Lenders agree that the Administrative Agent may (but shall not be obligated to), and the Borrower and the Lenders hereby irrevocably authorize the Administrative Agent to, fund, on behalf of the Revolving Loan Lenders, Revolving Loans pursuant to Section 2.01, subject to the procedures for settlement set forth in Section 2.02(d); provided, however, that (A) the Administrative Agent shall in no event fund any such Revolving Loans if the Administrative Agent shall have received written notice from the Collateral Agent or the Required Lenders on the Business Day prior to the date of the proposed Revolving Loan that one or more of the conditions precedent contained in Section 5.02 will not be satisfied at the time of the proposed Revolving Loan, and (B) the Administrative Agent shall not otherwise be required to determine that, or take notice whether, the conditions precedent in Section 5.02 have been satisfied. If the Borrower gives a Notice of Borrowing requesting a Revolving Loan and the Administrative Agent elects not to fund such Revolving Loan on behalf of the Revolving Loan Lenders, then promptly after receipt of the Notice of Borrowing requesting such Revolving Loan, the Administrative Agent shall notify each Revolving Loan Lender of the specifics of the requested Revolving Loan and that it will not fund the requested Revolving Loan on behalf of the Revolving Loan Lenders. If the Administrative Agent notifies the Revolving Loan Lenders that it will not fund a requested Revolving Loan on behalf of the Revolving Loan Lenders, each Revolving Loan Lender shall make its Pro Rata Share of the Revolving Loan available to the Administrative Agent, in immediately available funds, in the Administrative Agent's Account no later than 3:00 p.m. (New York City time) (provided that the Administrative Agent requests payment from such Revolving Loan Lender not later than 1:00 p.m. (New York City time)) on the date of the proposed Revolving Loan. The Administrative Agent will make the proceeds of such

Revolving Loans available to the Borrower on the day of the proposed Revolving Loan by causing an amount, in immediately available funds, equal to the proceeds of all such Revolving Loans received by the Administrative Agent in the Administrative Agent's Account or the amount funded by the Administrative Agent on behalf of the Revolving Loan Lenders to be deposited in an account designated by the Borrower.

(iii) If the Administrative Agent has notified the Revolving Loan Lenders that the Administrative Agent, on behalf of the Revolving Loan Lenders, will not fund a particular Revolving Loan pursuant to Section 2.02(c)(ii), the Administrative Agent may assume that each such Revolving Loan Lender has made such amount available to the Administrative Agent on such day and the Administrative Agent, in its sole discretion, may, but shall not be obligated to, cause a corresponding amount to be made available to the Borrower on such day. If the Administrative Agent makes such corresponding amount available to the Borrower and such corresponding amount is not in fact made available to the Administrative Agent by any such Revolving Loan Lender, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Revolving Loan Lender together with interest thereon, for each day from the date such payment was due until the date such amount is paid to the Administrative Agent, at the Federal Funds Rate for 3 Business Days and thereafter at the Reference Rate. During the period in which such Revolving Loan Lender has not paid such corresponding amount to the Administrative Agent, notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the amount so advanced by the Administrative Agent to the Borrower shall, for all purposes hereof, be a Revolving Loan made by the Administrative Agent for its own account. Upon any such failure by a Revolving Loan Lender to pay the Administrative Agent, the Administrative Agent shall promptly thereafter notify the Borrower of such failure and the Borrower shall immediately pay such corresponding amount to the Administrative Agent for its own account.

(iv) Nothing in this Section 2.02(c) shall be deemed to relieve any Revolving Loan Lender from its obligations to fulfill its Revolving Credit Commitment hereunder or to prejudice any rights that the Administrative Agent or the Borrower may have against any Revolving Loan Lender as a result of any default by such Revolving Loan Lender hereunder.

(d) (i) With respect to all periods for which the Administrative Agent has funded Revolving Loans pursuant to Section 2.02(c), on Friday of each week, or if the applicable Friday is not a Business Day, then on the following Business Day, or such shorter period as the Administrative Agent may from time to time select (any such week or shorter period being herein called a "Settlement Period"), the Administrative Agent shall notify each Revolving Loan Lender of the unpaid principal amount of the Revolving Loans outstanding as of the last day of each such Settlement Period. In the event that such amount is greater than the unpaid principal amount of the Revolving Loans outstanding on the last day of the Settlement Period immediately preceding such Settlement Period (or, if there has been no preceding Settlement Period, the amount of the Revolving Loans made on the date of such Revolving Loan Lender's initial funding), each Revolving Loan Lender shall promptly (and in any event not later than 2:00 p.m. (New York City time) if the Administrative Agent requests payment from such Lender not later than 12:00 noon (New York City time) on such day) make available to the Administrative Agent its Pro Rata Share of the difference in immediately available funds. In the event that such amount is less than such unpaid principal

amount, the Administrative Agent shall promptly pay over to each Revolving Loan Lender its Pro Rata Share of the difference in immediately available funds. In addition, if the Administrative Agent shall so request at any time when a Default or an Event of Default shall have occurred and be continuing, or any other event shall have occurred as a result of which the Administrative Agent shall determine that it is desirable to present claims against the Borrower for repayment, each Revolving Loan Lender shall promptly remit to the Administrative Agent or, as the case may be, the Administrative Agent shall promptly remit to each Revolving Loan Lender, sufficient funds to adjust the interests of the Revolving Loan Lenders in the then outstanding Revolving Loans to such an extent that, after giving effect to such adjustment, each such Revolving Loan Lender's interest in the then outstanding Revolving Loans will be equal to its Pro Rata Share thereof. The obligations of the Administrative Agent and each Revolving Loan Lender under this Section 2.02(d) shall be absolute and unconditional. Each Revolving Loan Lender shall only be entitled to receive interest on its Pro Rata Share of the Revolving Loans which have been funded by such Revolving Loan Lender.

(ii) In the event that any Revolving Loan Lender fails to make any payment required to be made by it pursuant to Section 2.02(d)(i), the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Revolving Loan Lender together with interest thereon, for each day from the date such payment was due until the date such amount is paid to the Administrative Agent, at the Federal Funds Rate for 3 Business Days and thereafter at the Reference Rate. During the period in which such Revolving Loan Lender has not paid such corresponding amount to the Administrative Agent, notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the amount so advanced by the Administrative Agent to the Borrower shall, for all purposes hereof, be a Revolving Loan made by the Administrative Agent for its own account. Upon any such failure by a Revolving Loan Lender to pay the Administrative Agent, the Administrative Agent shall promptly thereafter notify the Borrower of such failure and the Borrower shall immediately pay such corresponding amount to the Administrative Agent for its own account. Nothing in this Section 2.02(d)(ii) shall be deemed to relieve any Revolving Loan Lender from its obligation to fulfill its Revolving Credit Commitment hereunder or to prejudice any rights that the Administrative Agent or the Borrower may have against any Revolving Loan Lender as a result of any default by such Revolving Loan Lender hereunder.

Section 2.03 Repayment of Loans; Evidence of Debt. (a) The outstanding principal of all Revolving Loans shall be due and payable on the Final Maturity Date or, if earlier, on the date on which they are declared due and payable pursuant to the terms of this Agreement.

(b) The outstanding principal amount of the Term Loan shall be repaid in consecutive quarterly installments on the last day of each calendar quarter beginning on June 30, 2016 in an aggregate principal amount equal to \$1,250,000.00. The outstanding unpaid principal amount of the Term Loan, and all accrued and unpaid interest thereon, shall be due and payable on the earlier of (i) the Final Maturity Date and (ii) the date on which the Term Loan is declared due and payable pursuant to the terms of this Agreement.

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(e) The entries made in the accounts maintained pursuant to Section 2.03(c) or Section 2.03(d) shall be prima facie evidence of the existence and amounts of the obligations recorded therein (absent manifest error); provided that (i) the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement and (ii) in the event of any conflict between the entries made in the accounts maintained pursuant to Section 2.03(c) and the accounts maintained pursuant to Section 2.03(d), the accounts maintained pursuant to Section 2.03(d) shall govern and control.

(f) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) in a form furnished by the Collateral Agent and reasonably acceptable to the Borrower. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 12.07) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

#### Section 2.04 Interest.

(a) Revolving Loans. Subject to the terms of this Agreement, at the option of the Borrower, each Revolving Loan shall be either a Reference Rate Loan or a LIBOR Rate Loan. Each Revolving Loan that is a Reference Rate Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of such Loan until repaid, at a rate per annum equal to the Reference Rate plus the Applicable Margin. Each Revolving Loan that is a LIBOR Rate Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of such Loan until repaid, at a rate per annum equal to the LIBOR Rate for the Interest Period in effect for such Loan plus the Applicable Margin.

(b) Term Loan. Subject to the terms of this Agreement, at the option of the Borrower, the Term Loan or any portion thereof shall be either a Reference Rate Loan or a LIBOR Rate Loan. Each portion of the Term Loan that is a Reference Rate Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of the Term Loan until repaid, at a rate per annum equal to the Reference Rate plus the Applicable Margin, and each portion of the Term Loan that is a LIBOR Rate Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of the Term Loan until repaid, at a rate per annum equal to the LIBOR Rate for the Interest Period in effect for the Term Loan (or such portion thereof) plus the Applicable Margin.

(c) Default Interest. To the extent permitted by law and notwithstanding anything to the contrary in this Section, upon the occurrence and during the continuance of an Event of Default, the principal of, and all accrued and unpaid interest on, all Loans, fees, indemnities or any other Obligations of the Loan Parties under this Agreement and the other Loan Documents, shall bear interest, from the date such Event of Default occurred until the date such Event of Default is cured or waived in writing in accordance herewith, at a rate per annum equal at all times to the Post-Default Rate.

(d) Interest Payment. Interest on each Loan shall be payable (i) in the case of a Reference Rate Loan, monthly, in arrears, on the first day of each month, commencing on the first day of the month following the month in which such Loan is made, (ii) in the case of a LIBOR Rate Loan, on the last day of each Interest Period applicable to such Loan and (iii) in the case of each Loan, at maturity (whether upon demand, by acceleration or otherwise). Interest at the Post-Default Rate under Section 2.04(c) shall be payable on demand. The Borrower hereby authorizes the Administrative Agent to, and the Administrative Agent may, from time to time, charge the Loan Account pursuant to Section 4.01 with the amount of any interest payment due hereunder.

(e) General. All interest shall be computed on the basis of a year of 360 days for the actual number of days, including the first day but excluding the last day, elapsed.

#### Section 2.05 Reduction of Commitment; Prepayment of Loans.

(a) Reduction of Commitments.

(i) Revolving Credit Commitments. The Total Revolving Credit Commitment shall terminate on the Final Maturity Date. The Borrower may reduce the Total Revolving Credit Commitment to an amount (which may be zero) not less than the sum of (A) the aggregate unpaid principal amount of all Revolving Loans then outstanding and (B) the aggregate principal amount of all Revolving Loans not yet made as to which a Notice of Borrowing has been given by the Borrower under Section 2.02. Each such reduction shall be (1) in an amount which is an initial minimum amount of \$1,000,000 and integral multiples of \$250,000 in excess thereof (or by the full amount of the Total Revolving Credit Commitment in effect immediately prior to such reduction if such amount at that time is less than \$1,000,000), (2) made by providing not less than 3 Business Days' prior written notice to the Administrative Agent (or such shorter period of time as may be agreed by the Administrative Agent); provided that, such notice may provide that it is conditioned upon the consummation of other financing or the consummation of a sale of Equity Interests, in which case, such notice may be revoked or extended by the Borrower if any such condition is not satisfied prior to the date of termination of this Agreement in such notice, (3) irrevocable and (4) accompanied by the payment of the Applicable Premium, if any, payable in connection with such reduction of the Total Revolving Credit Commitment. Once reduced, the Total Revolving Credit Commitment may not be increased. Each such reduction of the Total Revolving Credit Commitment shall reduce the Revolving Credit Commitment of each Lender proportionately in accordance with its Pro Rata Share thereof.

(i) Term Loan. The Total Term Loan Commitment shall terminate at 5:00 p.m. (New York City time) on the Effective Date.

(b) Optional Prepayment.

(i) Revolving Loans. The Borrower may, at any time and from time to time, prepay the principal of any Revolving Loan, in whole or in part. Each prepayment made pursuant to this Section 2.05(b)(i) in connection with a reduction of the Total Revolving Credit Commitment pursuant to Section 2.05(a)(i) above shall be accompanied by the payment of the Applicable Premium, if any, payable in connection with such reduction of the Total Revolving Credit Commitment.

(ii) Term Loan. The Borrower may, at any time and from time to time, upon (A) in the case of a Reference Rate Loan, at least 3 Business Days prior to written notice to the Administrative Agent, or (B) in the case of a LIBOR Rate Loan at least at least 3 Business Days' prior written notice to the Administrative Agent (or, in each case, such shorter period of time as the Administrative Agent may agree to), prepay the principal of the Term Loan, in whole or in part; provided, that such notice may provide that it is conditioned upon the consummation of other financing or the consummation of a sale of Equity Interests, in which case, such notice may be revoked or extended by the Borrowers if any such condition is not satisfied prior to the date of termination of this Agreement in such notice. Each prepayment made pursuant to this Section 2.05(b)(ii) shall be accompanied by the payment of (A) accrued interest to the date of such payment on the amount prepaid and (B) the Applicable Premium, if any, payable in connection with such prepayment of the Term Loan. Each such prepayment of the Term Loan pursuant to this Section 2.05(b) shall be applied against the remaining installments of principal due on the Term Loan in such order of maturity as the Borrower may direct.

(iii) Termination of Agreement. The Borrower may, upon at least 10 Business Days (or such shorter period of time as the Administrative Agent may agree to) prior written notice to the Administrative Agent, terminate this Agreement by paying to the Administrative Agent, in cash, the Obligations (other than Contingent Indemnity Obligations), in full, plus the Applicable Premium, if any, payable in connection with such termination of this Agreement; provided, that such notice may provide that it is conditioned upon the consummation of other financing or the consummation of a sale of Equity Interests, in which case, such notice may be revoked or extended by the Borrower if any such condition is not satisfied prior to the date of termination of this Agreement in such notice. If the Borrower has sent a notice of termination pursuant to this Section 2.05(b)(iii), then the Borrower shall be obligated to repay the Obligations, in full, plus the Applicable Premium, if any, payable in connection with such termination of this Agreement on the date set forth as the date of termination of this Agreement in such notice. Notwithstanding the foregoing, no Applicable Premium shall be due and payable in connection with any such prepayment made with the proceeds of a financing provided by any Agent or any Affiliate or Related Fund thereof.

(c) Mandatory Prepayment.

(i) Promptly, and in any event within 2 Business Days following the date upon which the Borrower is required to deliver to the Administrative Agent its audited annual financial statements pursuant to Section 7.01(a)(iii), commencing with the requirement to deliver to the Agents and the Lenders the financial statements for the Fiscal Year ended December 31, 2016, the Borrower shall prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to the result of (to the extent positive) (1) 50% of the Excess Cash Flow of the Parent and its Subsidiaries for such Fiscal Year minus (2) the aggregate principal amount of all payments made by the Borrower pursuant to Section 2.05(b) during such Fiscal Year (in the case of payments made by the Borrower pursuant to Section 2.05(b)(i), only to the extent that the Total Revolving Credit Commitment is permanently reduced by the amount of such payments).

(ii) Promptly, and in any event within 2 Business Days after receipt of any Net Cash Proceeds from any Disposition under clauses (h), (m) or (n) of the definition of Permitted Disposition or any Disposition that is not a Permitted Disposition by any Loan Party or its Subsidiaries, the Borrower shall prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection with such Disposition to the extent that the aggregate amount of Net Cash Proceeds received by all Loan Parties and their Subsidiaries (and not paid to the Administrative Agent as a prepayment of the Loans) shall exceed (y) for all such Dispositions by Foreign Subsidiaries, \$1,000,000 in any Fiscal Year and (z) for all such Dispositions by the Parent and its Domestic Subsidiaries, \$500,000 in any Fiscal Year. Nothing contained in this Section 2.05(c)(ii) shall permit any Loan Party or any of its Subsidiaries to make a Disposition of any property other than in accordance with Section 7.02(c)(ii).

(iii) Upon the issuance or incurrence by any Loan Party or any of its Subsidiaries of any Indebtedness (other than Permitted Indebtedness), the Borrower shall prepay the outstanding amount of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection therewith. The provisions of this Section 2.05(c)(iii) shall not be deemed to be implied consent to any such issuance, incurrence or sale otherwise prohibited by the terms and conditions of this Agreement.

(iv) Within 2 Business Days after receipt of any Net Cash Proceeds by any Loan Party or any of its Subsidiaries of any Extraordinary Receipts, the Borrower shall prepay the outstanding principal of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection therewith to the extent that the aggregate amount of Net Cash Proceeds received by all Loan Parties (and not paid to the Administrative Agent as a prepayment of the Loans) shall exceed (x) for all such Extraordinary Receipts received by Foreign Subsidiaries (excluding Extraordinary Receipts of the type described in clause (a) of the definition thereof), \$1,000,000 in any Fiscal Year, (y) for all such Extraordinary Receipts received by the Parent and its Domestic Subsidiaries (excluding Extraordinary Receipts of the type described in clause (a) of the definition thereof), \$500,000 in any Fiscal Year and (z) for all such Extraordinary Receipts of the type described in clause (a) of the definition thereof, \$1,000,000 in any Fiscal Year.

(v) [Reserved.]

(vi) Notwithstanding the foregoing, with respect to Net Cash Proceeds received by any Loan Party or any of its Subsidiaries in connection with a Disposition or the receipt of Extraordinary Receipts consisting of insurance proceeds or condemnation awards that are required to be used to prepay the Obligations pursuant to Section 2.05(c)(ii) or Section 2.05(c)(iv), as the case may be, up to \$500,000 in the aggregate in any Fiscal Year of the Net Cash Proceeds from all such Dispositions and Extraordinary Receipts shall not be required to be so used to prepay the Obligations to the extent that such Net Cash Proceeds are used to replace, repair, restore or purchase properties or assets (other than current assets) used in such Person's business, provided that, (A) no Event of Default has occurred and is continuing on the date such Person receives such Net Cash Proceeds, (B) the Borrower delivers a certificate to the Administrative Agent within 10 Business Days after such Disposition or loss, destruction or taking, as the case may be, stating that such Net Cash Proceeds shall be used to replace, repair, restore or purchase properties or assets used or useful in such Person's business within a period specified in such certificate not to exceed 180 days after the date of receipt of such Net Cash Proceeds (which certificate shall set forth estimates of the Net Cash Proceeds to be so expended), (C) such Net Cash Proceeds are deposited in an account subject to a Control Agreement (if held by a Loan Party), and (D) upon the earlier of (1) the expiration of the period specified in the relevant certificate furnished to the Administrative Agent pursuant to clause (B) above or (2) the occurrence of an Event of Default, such Net Cash Proceeds, if not theretofore so used, shall be used to prepay the Obligations in accordance with Section 2.05(c)(ii) or Section 2.05(c)(iv) as applicable.

(d) Application of Payments. Each prepayment pursuant to subsections (c)(i), (c)(ii), (c)(iii) and (c)(iv) above shall be applied, first, to the Term Loan, until paid in full and second, to the Revolving Loans (with a corresponding permanent reduction in the Revolving Credit Commitments), until paid in full. Each prepayment of the Term Loan pursuant to Section 2.05(c) shall be applied pro rata against the remaining installments of principal of the Term Loan. Notwithstanding the foregoing, after the occurrence and during the continuance of an Event of Default, if the Administrative Agent has elected, or has been directed by the Collateral Agent or the Required Lenders, to apply payments in respect of any Obligations in accordance with Section 4.03(b), prepayments required under Section 2.05(c) shall be applied in the manner set forth in Section 4.03(b). Any prepayment of any Loans shall be applied first to Reference Rate Loans to the full extent thereof before application to LIBOR Rate Loans, in each case in a manner which minimizes the amount of any payments required to be made by the Borrower pursuant to Section 2.08.

(e) Interest and Fees. Any prepayment made pursuant to this Section 2.05 shall be accompanied by (i) with respect to the (x) Revolving Loans that are repaid together with a corresponding concurrent permanent reduction in the Revolving Credit Commitments and (y) the Term Loan, accrued interest on the principal amount being prepaid to the date of prepayment, (ii) any Funding Losses payable pursuant to Section 2.08, (iii) the Applicable Premium, if any, payable in connection with such prepayment of the Loans to the extent required under Section 2.06(b) and (iv) if such prepayment would reduce the amount of the outstanding Loans to zero at a time when the Total Revolving Credit Commitment has been terminated, such prepayment shall be accompanied by the payment of all fees accrued to such date pursuant to Section 2.06.

(f) Cumulative Prepayments. Except as otherwise expressly provided in this Section 2.05, payments with respect to any subsection of this Section 2.05 are in addition to payments made or required to be made under any other subsection of this Section 2.05.

Section 2.06 Fees.

(a) Unused Line Fee. From and after the Effective Date and until the Termination Date, the Borrower shall pay to the Administrative Agent for the account of the Revolving Loan Lenders, in accordance with their Pro Rata Shares, monthly in arrears on the first day of each month commencing on the first day of the first month after the Effective Date, an unused line fee (the "Unused Line Fee"), which shall accrue at the rate per annum of 0.5% on the excess, if any, of the Total Revolving Credit Commitment over the sum of the average principal amount of all Revolving Loans outstanding from time to time during the preceding month.

(b) Applicable Premium.

(i) Upon the occurrence of an Applicable Premium Trigger Event prior to the third anniversary of the Effective Date, the Borrower shall pay to the Collateral Agent, for the account of the Lenders in accordance with their Pro Rata Shares, the Applicable Premium.

(ii) Any Applicable Premium payable in accordance with this Section 2.06(b) shall be presumed to be equal to the liquidated damages sustained by the Lenders as the result of the occurrence of the Applicable Premium Trigger Event and the Loan Parties agree that it is reasonable under the circumstances currently existing. THE LOAN PARTIES EXPRESSLY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING APPLICABLE PREMIUM IN CONNECTION WITH ANY ACCELERATION.

(iii) The Loan Parties expressly agree that: (A) the Applicable Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Applicable Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between the Lenders and the Loan Parties giving specific consideration in this transaction for such agreement to pay the Applicable Premium; (D) the Agents, the Lenders and the Loan Parties shall be estopped hereafter from claiming differently than as agreed to in this paragraph; (E) their agreement to pay the Applicable Premium is a material inducement to Lenders to provide the Commitments and make the Loans, and (F) the Applicable Premium represents a good faith, reasonable estimate and calculation of the lost profits or damages of the Agents and the Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Agents and the Lenders or profits lost by the Agents and the Lenders as a result of such Applicable Premium Trigger Event.

(iv) Nothing contained in this Section 2.06(b) shall permit any prepayment of the Loans or reduction of the Commitments not otherwise permitted by the terms of this Agreement or any other Loan Document.

(c) Fee Letter. As and when due and payable under the terms of the Fee Letter, the Borrower shall pay the fees set forth in the Fee Letter.

(d) Audit and Collateral Monitoring Fees. The Borrower acknowledges that pursuant to Section 7.01(f), representatives of the Agents may visit any or all of the Loan Parties and/or conduct inspections, audits and/or examinations of any or all of the Loan Parties at any time and from time to time, in each case, subject to the limitations below and, in the absence of a continuing Event of Default, during business hours and with reasonable prior notice. The Borrower agrees to pay (i) \$1,500 per day per examiner plus the examiner's out-of-pocket costs and reasonable expenses incurred in connection with all such visits, inspections, audits and/or examinations and (ii) the reasonable cost of all visits, inspections, audits and/or examinations conducted by a third party on behalf of the Agents; provided, that so long as no Event of Default shall have occurred and be continuing, the Borrower shall not be obligated to reimburse the Agents for more than 1 audit during any calendar year or 1 examination during any calendar year.

#### Section 2.07 LIBOR Option.

(a) The Borrower may, at any time and from time to time, so long as no Default or Event of Default has occurred and is continuing, elect to have interest on all or a portion of the Loans be charged at a rate of interest based upon the LIBOR Rate (the "LIBOR Option") by notifying the Administrative Agent prior to 11:00 a.m. (New York City time) at least 3 Business Days prior to (i) the proposed borrowing date of a Loan (as provided in Section 2.02), (ii) in the case of the conversion of a Reference Rate Loan to a LIBOR Rate Loan, the commencement of the proposed Interest Period or (iii) in the case of the continuation of a LIBOR Rate Loan as a LIBOR Rate Loan, the last day of the then current Interest Period (the "LIBOR Deadline"). Notice of the Borrower's election of the LIBOR Option for a permitted portion of the Loans and an Interest Period pursuant to this Section 2.07(a) shall be made by delivery to the Administrative Agent of (A) a Notice of Borrowing (in the case of the initial making of a Loan) in accordance with Section 2.02 or (B) a LIBOR Notice prior to the LIBOR Deadline (or by telephonic notice received by the Administrative Agent before the LIBOR Deadline (to be confirmed by delivery to the Administrative Agent of a LIBOR Notice received by the Administrative Agent prior to 5:00 p.m. (New York City time) on the same day)). Promptly upon its receipt of each such LIBOR Notice, the Administrative Agent shall provide a copy thereof to each of the Lenders. Each LIBOR Notice shall be irrevocable and binding on the Borrower.

(b) Interest on LIBOR Rate Loans shall be payable in accordance with Section 2.04(d). On the last day of each applicable Interest Period, unless the Borrower properly has exercised the LIBOR Option with respect thereto, the interest rate applicable to such LIBOR Rate Loans automatically shall convert to the rate of interest then applicable to Reference Rate Loans of the same type hereunder. At any time that a Default or an Event of Default has occurred and is continuing, the Borrower no longer shall have the option to request that any portion of the Loans bear interest at the LIBOR Rate and the Administrative Agent shall have the right to convert the interest rate on all outstanding LIBOR Rate Loans to the rate of interest then applicable to Reference Rate Loans of the same type hereunder prior to the last day of the then current Interest Period.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Borrower (i) shall have not more than 5 LIBOR Rate Loans in effect at any given time, and (ii) only may exercise the LIBOR Option for LIBOR Rate Loans of at least \$500,000 and integral multiples of \$100,000 in excess thereof.

(d) The Borrower may prepay LIBOR Rate Loans at any time; provided, however, that in the event that LIBOR Rate Loans are prepaid on any date that is not the last day of the Interest Period applicable thereto, including as a result of any mandatory prepayment pursuant to Section 2.05(c) or any application of payments or proceeds of Collateral in accordance with Section 4.03 or Section 4.04 or for any other reason, including early termination of the term of this Agreement or acceleration of all or any portion of the Obligations pursuant to the terms hereof, the Borrower shall indemnify, defend, and hold the Agents and the Lenders and their participants harmless against any and all Funding Losses in accordance with Section 2.08.

(e) Anything to the contrary contained herein notwithstanding, neither any Agent nor any Lender, nor any of their participants, is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues at the LIBOR Rate. The provisions of this Article II shall apply as if each Lender or its participants had match funded any Obligation as to which interest is accruing at the LIBOR Rate by acquiring eurodollar deposits for each Interest Period in the amount of the LIBOR Rate Loans.

Section 2.08 Funding Losses. In connection with each LIBOR Rate Loan, the Borrower shall indemnify, defend, and hold the Agents and the Lenders harmless against any loss, cost, or expense incurred by any Agent or any Lender as a result of (a) the payment of any principal of any LIBOR Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of a Default or an Event of Default or any mandatory prepayment required pursuant to Section 2.05(c)), (b) the conversion of any LIBOR Rate Loan other than on the last day of the Interest Period applicable thereto (including as a result of a Default or an Event of Default), or (c) the failure to borrow (other than as a result of a failure of a Defaulting Lender to fund in accordance with this Agreement), convert, continue or prepay any LIBOR Rate Loan on the date specified in any Notice of Borrowing or LIBOR Notice delivered pursuant hereto (such losses, costs, and expenses, collectively, "Funding Losses"). Funding Losses shall, with respect to any Agent or any Lender, be deemed to equal the amount reasonably determined by such Agent or such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such LIBOR Rate Loan had such event not occurred, at the LIBOR Rate that would have been applicable thereto, 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 borrow, convert or continue, for the period that would have been the Interest Period therefor), minus (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate which such Agent or such Lender would be offered were it to be offered, at the commencement of such period, Dollar deposits of a comparable amount and period in the London interbank market. A certificate of an Agent or a Lender delivered to the Borrower setting forth any amount or amounts that such Agent or such Lender is entitled to receive pursuant to this Section 2.08 shall be conclusive absent manifest error.

Section 2.09 Taxes. (a) Any and all payments by or on account of any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without deduction for any and all Taxes, except as required by applicable law. If any Loan Party shall be required to deduct any Taxes from or in respect of any sum payable hereunder to any Secured Party (or any transferee or assignee thereof, including a participation holder (any such entity, a "Transferee")), (i) the applicable Withholding Agent shall make such deductions and (ii) the applicable Withholding Agent shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law and (iii) if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased by the amount (an "Additional Amount") necessary such that after making all required deductions (including deductions applicable to additions sums payable under this Section 2.09) such Secured Party (or such Transferee) receives the amount equal to the sum it would have received had no such deductions been made.

(b) In addition, each Loan Party agrees to pay to the relevant Governmental Authority in accordance with applicable law any Other Taxes. Each Loan Party shall deliver to each Secured Party official receipts in respect of any Taxes or Other Taxes payable hereunder promptly after payment of such Taxes or Other Taxes.

(c) The Loan Parties hereby jointly and severally indemnify and agree to hold each Secured Party harmless from and against Taxes and Other Taxes (including, without limitation, Taxes and Other Taxes imposed on any amounts payable under this Section 2.09) paid by such Person, whether or not such Taxes or Other Taxes were correctly or legally asserted. Such indemnification shall be paid within 10 days from the date on which any such Person makes written demand therefore specifying in reasonable detail the nature and amount of such Taxes or Other Taxes.

(d) Each Lender (or Transferee) that is not a U.S. Person (a "Non-U.S. Lender") agrees that it shall, no later than the Effective Date (or, in the case of a Lender which becomes a party hereto pursuant to Section 12.07 hereof after the Effective Date, promptly after the date upon which such Lender becomes a party hereto) deliver to the Agents one properly completed and duly executed copy of either U.S. Internal Revenue Service Form W-8BEN, W-8BEN-E, W-8ECI or W-8IMY or any subsequent versions thereof or successors thereto, in each case claiming complete exemption from, or reduced rate of, U.S. Federal withholding tax on payments of interest hereunder. In addition, in the case of a Non-U.S. Lender claiming exemption from U.S. Federal withholding tax under Section 871(h) or 881(c) of the Internal Revenue Code, such Non-U.S. Lender hereby represents to the Agents and the Borrower that such Non-U.S. Lender is not a bank for purposes of Section 881(c) of the Internal Revenue Code, is not a 10-percent shareholder (within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code) of the Parent and is not a controlled foreign corporation related to the Parent (within the meaning of Section 864(d)(4) of the Internal Revenue Code), and such Non-U.S. Lender agrees that it shall promptly notify the Agents in the event any such representation is no longer accurate. Such forms shall be delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement (or, in the case of a Transferee that is a participation holder, on or before the date such participation holder becomes a Transferee hereunder) and on or before the date, if any, such Non-U.S. Lender changes its applicable lending office by designating a different lending office. In addition, such Lender (or Transferee) or Agent shall deliver such forms within 20 days after receipt of a written request therefor from the Borrower or any Agent, the assigning

Lender or the Lender granting a participation, as applicable. Notwithstanding any other provision of this Section 2.09, a Non-U.S. Lender shall not be required to deliver any form pursuant to this Section 2.09(d) that such Non-U.S. Lender is not legally able to deliver. Each Lender that is a U.S. Person shall deliver to the Agents one completed and duly executed copy of the U.S. Internal Revenue Service Form W-9.

(e) Any Secured Party (or Transferee) claiming any indemnity payment or additional payment amounts payable pursuant to this Section 2.09 shall use reasonable efforts (consistent with legal and regulatory restrictions) to file any certificate or document reasonably requested in writing by the Borrower or to change the jurisdiction of its applicable lending office if the making of such a filing or change would avoid the need for or reduce the amount of any such indemnity payment or additional amount that may thereafter accrue, would not require such Secured Party (or Transferee) to disclose any information such Secured Party (or Transferee) deems confidential and would not, in the sole determination of such Secured Party (or Transferee), be otherwise disadvantageous to such Secured Party (or Transferee).

(f) If any Secured Party (or a Transferee) shall become aware that it is entitled to claim a refund from a Governmental Authority in respect of Taxes or Other Taxes with respect to which any Loan Party has made an indemnity payment or paid additional amounts, pursuant to this Section 2.09, it shall promptly notify the Borrower of the availability of such refund claim and shall, within 30 days after receipt of a request by the Borrower, make a claim to such Governmental Authority for such refund at the Loan Parties' expense. If any Secured Party (or a Transferee) receives a refund (including pursuant to a claim for refund made pursuant to the preceding sentence) in respect of any Taxes or Other Taxes with respect to which any Loan Party has made an indemnity payment or paid additional amounts pursuant to this Section 2.09, it shall within 30 days from the date of such receipt pay over such refund to the Borrower, net of all out-of-pocket expenses of such Secured Party (or Transferee).

(g) If a payment made to a Lender (or Transferee) or any Agent under any Loan Document would be subject to U.S. Federal withholding tax imposed by FATCA if such Lender (or Transferee) or Agent were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender (or Transferee) or Agent shall deliver to the Borrower and the Agents at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Agents such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrower or the Agents as may be necessary for the Borrower and the Agents to comply with their obligations under FATCA and to determine that such Lender (or Transferee) or Agent has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (g), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. Any forms, certifications or other documentation under this clause (g) shall be delivered by each Lender (or Transferee) and each Agent.

(h) The obligations of the Loan Parties under this Section 2.09 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 2.10 Increased Costs and Reduced Return. (a) If any Secured Party shall have determined that any Change in Law shall, subject to Section 2.08 (which shall be controlling with respect to the matters covered thereby) (i) subject such Secured Party, or any Person controlling such Secured Party to any tax, duty or other charge with respect to this Agreement or any Loan made by such Agent or such Lender, or change the basis of taxation of payments to such Secured Party or any Person controlling such Secured Party of any amounts payable hereunder (except, in each case, Indemnified Taxes and Excluded Taxes), (ii) impose, modify or deem applicable any reserve, special deposit or similar requirement against any Loan or against assets of or held by, or deposits with or for the account of, or credit extended by, such Secured Party or any Person controlling such Secured Party (other than those taken into account in determining the LIBOR Rate) or (iii) impose on such Secured Party or any Person controlling such Secured Party any other condition (other than with respect to Taxes) regarding this Agreement or any Loan, and the result of any event referred to in clauses (i), (ii) or (iii) above shall be to increase the cost to such Secured Party of making any Loan or agreeing to make any Loan, or to reduce any amount received or receivable by such Secured Party hereunder, then, upon demand by such Secured Party, the Borrower shall pay to such Secured Party such additional amounts as will compensate such Secured Party for such increased costs or reductions in amount.

(b) If any Secured Party shall have determined that any Change in Law either (i) affects or would affect the amount of capital required or expected to be maintained by such Secured Party or any Person controlling such Secured Party, and such Secured Party determines that the amount of such capital is increased as a direct or indirect consequence of any Loans made or maintained, such Secured Party's or such other controlling Person's other obligations hereunder, or (ii) has or would have the effect of reducing the rate of return on such Secured Party's or such other controlling Person's capital to a level below that which such Secured Party or such controlling Person could have achieved but for such circumstances as a consequence of any Loans made or maintained, or any agreement to make Loans or such Secured Party's or such other controlling Person's other obligations hereunder (in each case, taking into consideration, such Secured Party's or such other controlling Person's policies with respect to capital adequacy), then, upon demand by such Secured Party, the Borrower shall pay to such Secured Party from time to time such additional amounts as will compensate such Secured Party for such cost of maintaining such increased capital or such reduction in the rate of return on such Secured Party's or such other controlling Person's capital.

(c) All amounts payable under this Section 2.10 shall bear interest from the date that is 10 days after the date of demand by any Secured Party until payment in full to such Secured Party at the Reference Rate. A certificate of such Secured Party claiming compensation under this Section 2.10, specifying the event herein above described and the nature of such event shall be submitted by such Secured Party to the Borrower, setting forth the additional amount due and an explanation of the calculation thereof, and such Secured Party's reasons for invoking the provisions of this Section 2.10, and shall be final and conclusive absent manifest error.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 2.10 shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section 2.10 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the event that gives rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) The obligations of the Loan Parties under this Section 2.10 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 2.11 Changes in Law; Impracticability or Illegality.

(a) The LIBOR Rate may be adjusted by the Administrative Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs due to changes in applicable law occurring subsequent to the commencement of the then applicable Interest Period, including changes in tax laws (except changes of general applicability in corporate income tax laws) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), excluding the Reserve Percentage, which additional or increased costs would increase the cost of funding loans bearing interest at the LIBOR Rate. Notwithstanding the foregoing, in no event shall this Section 2.11(a) include payments in respect of Taxes, which shall be covered by Section 2.09. In any such event, the affected Lender shall give the Borrower and the Administrative Agent notice of such a determination and adjustment and the Administrative Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, the Borrower may, by notice to such affected Lender (i) require such Lender to furnish to the Borrower a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (ii) repay the LIBOR Rate Loans with respect to which such adjustment is made (together with any amounts due under Section 2.09).

(b) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation of application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain LIBOR Rate Loans or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to the Borrower and the Administrative Agent, and the Administrative Agent promptly shall transmit the notice to each other Lender and (i) in the case of any LIBOR Rate Loans of such Lender that are outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such LIBOR Rate Loans, and interest upon the LIBOR Rate Loans of such Lender thereafter shall accrue interest at the rate then applicable to Reference Rate Loans of the same type hereunder, and (ii) the Borrower shall not be entitled to elect the LIBOR

Option (including in any borrowing, conversion or continuation then being requested) until such Lender determines that it would no longer be unlawful or impractical to do so.

(c) The obligations of the Loan Parties under this Section 2.10(e) shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 2.12 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requires the Borrower to pay any Additional Amounts under Section 2.09 or requests compensation under Section 2.10 or 2.11(a), then such Lender shall (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to such Section in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requires the Borrower to pay any Additional Amounts under Section 2.09 or requests compensation under Section 2.10 or 2.11(a) and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with clause (a) above, or if any Lender is a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 12.07), all of its interests, rights and obligations under this Agreement and the other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Borrower shall have paid to the Agents any assignment fees specified in Section 12.07;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 2.08 and Section 2.09) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from payments required to be made pursuant to Section 2.09 or a claim for compensation under Section 2.10, or 2.11(a) such assignment will result in a reduction in such compensation or payments thereafter; and

(iv) such assignment does not conflict with applicable law.

Prior to the effective date of such assignment, the assigning Lender shall execute and deliver an Assignment and Acceptance, subject only to the conditions set forth above. If the assigning Lender

shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such assignment, the assigning Lender shall be deemed to have executed and delivered such Assignment and Acceptance. Any such assignment shall be made in accordance with the terms of Section 12.07.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

### **ARTICLE III**

**[RESERVED]**

### **ARTICLE IV**

#### **APPLICATION OF PAYMENTS; DEFAULTING LENDERS**

Section 4.01 Payments; Computations and Statements. (a) The Borrower will make each payment under this Agreement not later than 1:00 p.m. (New York City time) on the day when due, in lawful money of the United States of America and in immediately available funds, to the Administrative Agent's Account. All payments received by the Administrative Agent after 1:00 p.m. (New York City time) on any Business Day will, unless otherwise agreed by the Administrative Agent, be credited to the Loan Account on the next succeeding Business Day. All payments shall be made by the Borrower without set-off, counterclaim, recoupment, deduction or other defense to the Agents and the Lenders except as otherwise expressly permitted in Section 2.09. Except as provided in Section 2.02, after receipt, the Administrative Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal ratably to the Lenders in accordance with their Pro Rata Shares and like funds relating to the payment of any other amount payable to any Lender to such Lender, in each case to be applied in accordance with the terms of this Agreement. The Lenders and the Borrower hereby authorize the Administrative Agent to, and the Administrative Agent may, from time to time, charge the Loan Account of the Borrower with any amount due and payable by the Borrower under any Loan Document; provided, the Administrative Agent shall not charge the Loan Account with respect to unpaid third party expenses required to be paid by the Borrower pursuant to this Agreement (including, without limitation, legal fees and expenses of counsel) which are not outstanding for more than 15 Business Days after presentation of an invoice to the Borrower. Each of the Lenders and the Borrower agrees that the Administrative Agent shall have the right to make such charges whether or not any Default or Event of Default shall have occurred and be continuing or whether any of the conditions precedent in Section 5.02 have been satisfied. Any amount charged to the Loan Account of the Borrower shall be deemed a Revolving Loan hereunder made by the Revolving Loan Lenders to the Borrower, funded by the Administrative Agent on behalf of the Revolving Loan Lenders and subject to Section 2.02 of this Agreement. The Lenders and the Borrower confirm that any charges which the Administrative Agent may so make to the Loan Account of the Borrower as herein provided will be made as an accommodation to the Borrower and solely at the

Administrative Agent's discretion, provided that the Administrative Agent shall, subject to the restrictions set forth in this Section 4.01(a), from time to time upon the request of the Collateral Agent, charge the Loan Account of the Borrower with any amount due and payable under any Loan Document. Whenever any payment to be made under any such Loan Document shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall in such case be included in the computation of interest or fees, as the case may be. All computations of fees shall be made by the Administrative Agent on the basis of a year of 360 days for the actual number of days. Each determination by the Administrative Agent of an interest rate or fees hereunder shall be conclusive and binding for all purposes in the absence of manifest error.

(b) The Administrative Agent shall provide the Borrower, promptly after the end of each calendar month, a summary statement (in the form from time to time used by the Administrative Agent) of the opening and closing daily balances in the Loan Account of the Borrower during such month, the amounts and dates of all Loans made to the Borrower during such month, the amounts and dates of all payments on account of the Loans to the Borrower during such month and the Loans to which such payments were applied, the amount of interest accrued on the Loans to the Borrower during such month and the amount and nature of any charges to the Loan Account made during such month on account of fees, commissions, expenses and other Obligations. All entries on any such statement shall be presumed to be correct and, if the Borrower has not objected in good faith within 30 days after the same is sent, shall be final and conclusive absent manifest error.

Section 4.02 Sharing of Payments. Except as provided in Section 2.02 hereof, if any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of any Obligation in excess of its ratable share of payments on account of similar obligations obtained by all the Lenders, such Lender shall forthwith purchase from the other Lenders such participations in such similar obligations held by them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided, however, that (a) if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and each Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (i) the amount of such Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid by the purchasing Lender in respect of the total amount so recovered and (b) the provisions of this Section shall not be construed to apply to (i) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), or (ii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans, other than to any Loan Party or any Subsidiary thereof (as to which the provisions of this Section shall apply). The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section may, to the fullest extent permitted by law, exercise all of its rights (including the Lender's right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation.

Section 4.03 Apportionment of Payments. Subject to Section 2.02 hereof:

(a) All payments of principal and interest in respect of outstanding Loans, all payments of fees (other than the fees set forth in Section 2.06 hereof) and all other payments in respect of any other Obligations, shall be allocated by the Administrative Agent among such of the Lenders as are entitled thereto, in proportion to their respective Pro Rata Shares or otherwise as provided herein or, in respect of payments not made on account of Loans, as designated by the Person making payment when the payment is made.

(b) After the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and upon the direction of the Collateral Agent or the Required Lenders shall, apply all payments in respect of any Obligations, including without limitation, all proceeds of the Collateral, subject to the provisions of this Agreement, (i) first, ratably to pay the Obligations in respect of any fees, expense reimbursements, indemnities and other amounts then due and payable to the Agents until paid in full; (ii) second, to pay interest then due and payable in respect of the Collateral Agent Advances until paid in full; (iii) third, to pay principal of the Collateral Agent Advances until paid in full; (iv) fourth, ratably to pay the Obligations in respect of any fees (other than any Applicable Premium), expense reimbursements, indemnities and other amounts then due and payable to the Lenders until paid in full; (v) fifth, ratably to pay interest then due and payable in respect of the Loans until paid in full; (vi) sixth, ratably to pay principal of the Loans until paid in full; (vii) seventh, ratably to pay the Obligations in respect of any Applicable Premium then due and payable to the Lenders until paid in full; and (viii) eighth, to the ratably payment of all other Obligations then due and payable.

(c) For purposes of Section 4.03(b), "paid in full" means payment in cash of all amounts owing under the Loan Documents according to the terms thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest, interest on interest, and expense reimbursements, whether or not the same would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(d) In the event of a direct conflict between the priority provisions of this Section 4.03 and other provisions contained in any other Loan Document, it is the intention of the parties hereto that both such priority provisions in such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 4.03 shall control and govern.

Section 4.04 Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(a) Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 12.02.

(b) The Administrative Agent shall not be obligated to transfer to such Defaulting Lender any payments made by the Borrower to the Administrative Agent for such Defaulting Lender's benefit, and, in the absence of such transfer to such Defaulting Lender, the Administrative Agent shall transfer any such payments to each other non-Defaulting Lender ratably in accordance with their Pro Rata Shares (without giving effect to the Pro Rata Shares of such Defaulting Lender) (but only to the extent that such Defaulting Lender's Loans were funded by the other Lenders) or, if so directed by the Borrower and if no Default or Event of Default has occurred and is continuing (and to the extent such Defaulting Lender's Loans were not funded by the other Lenders), retain the same to be re-advanced to the Borrower as if such Defaulting Lender had made such Loans to the Borrower. Subject to the foregoing, the Administrative Agent may hold and, in its discretion, re-lend to the Borrower for the account of such Defaulting Lender the amount of all such payments received and retained by the Administrative Agent for the account of such Defaulting Lender.

(c) Any such failure to fund by any Defaulting Lender shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle the Borrower to, among other things, replace the Defaulting Lender in accordance with Section 2.12. In no event shall the Borrower be required to pay fees in respect of any Defaulting Lender's unfunded Commitments unless another Lender has funded such Defaulting Lender's Pro Rata Share of any Loans in respect of such Commitment.

(d) The operation of this Section shall not be construed to increase or otherwise affect the Commitments of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by the Borrower of its duties and obligations hereunder to the Administrative Agent or to the Lenders other than such Defaulting Lender.

(e) This Section shall remain effective with respect to such Lender until either (i) the Obligations under this Agreement shall have been declared or shall have become immediately due and payable or (ii) the Agents and the Borrower shall have waived such Defaulting Lender's default in writing, and the Defaulting Lender makes its Pro Rata Share of the applicable defaulted Loans and pays to the Agents all amounts owing by such Defaulting Lender in respect thereof; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such Lender was a Defaulting Lender; provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender's having been a Defaulting Lender.

## ARTICLE V

### CONDITIONS TO LOANS

Section 5.01 Conditions Precedent to Effectiveness. This Agreement shall become effective as of the Business Day (the "Effective Date") when each of the following conditions precedent shall have been satisfied in a manner satisfactory to the Agents:

(a) Payment of Fees, Etc. The Borrower shall have paid on or before the Effective Date all fees, costs, expenses and taxes then payable pursuant to Section 2.06 and Section 12.04 have been invoiced.

(b) Representations and Warranties; No Event of Default. The following statements shall be true and correct: (i) the representations and warranties contained in Article VI and in each other Loan Document are true and correct in all material respects on and as of such date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct in all material respects on and as of such earlier date) and (ii) no Default or Event of Default shall have occurred and be continuing on the Effective Date or would result from this Agreement or the other Loan Documents becoming effective in accordance with its or their respective terms.

(c) Legality. The making of the initial Loans shall not contravene any law, rule or regulation applicable to any Secured Party.

(d) Delivery of Documents. The Collateral Agent shall have received on or before the Effective Date the following, each in form and substance reasonably satisfactory to the Collateral Agent and, unless indicated otherwise, dated the Effective Date and, if applicable, duly executed by the Persons party thereto:

(i) a Security Agreement, together with the original stock certificates representing all of the Equity Interests and all promissory notes required to be pledged thereunder, accompanied by undated stock powers executed in blank and other proper instruments of transfer;

(ii) a UCC Filing Authorization Letter, together with evidence satisfactory to the Collateral Agent of the filing of appropriate financing statements on Form UCC-1 in such office or offices as may be necessary or, in the opinion of the Collateral Agent, desirable to perfect the security interests purported to be created by the Security Agreement;

(iii) the results of searches for any effective UCC financing statements, tax Liens or judgment Liens filed against any Loan Party or its property, which results shall not show any such Liens (other than Permitted Liens);

(iv) a Perfection Certificate;

- (v) the Disbursement Letter;
- (vi) the Fee Letter;
- (vii) the Intercompany Subordination Agreement;

(viii) a certificate of an Authorized Officer of each Loan Party, certifying (A) as to copies of the Governing Documents of such Loan Party, together with all amendments thereto (including, without limitation, a true and complete copy of the charter, certificate of formation, certificate of limited partnership or other publicly filed organizational document of each Loan Party certified as of a recent date not more than 30 days prior to the Effective Date by an appropriate official of the jurisdiction of organization of such Loan Party which shall set forth the same complete name of such Loan Party as is set forth herein and the organizational number of such Loan Party, if an organizational number is issued in such jurisdiction), (B) as to a copy of the resolutions or written consents of such Loan Party authorizing (1) the borrowings hereunder and the transactions contemplated by the Loan Documents to which such Loan Party is or will be a party, and (2) the execution, delivery and performance by such Loan Party of each Loan Document to which such Loan Party is or will be a party and the execution and delivery of the other documents to be delivered by such Person in connection herewith and therewith, (C) the names and true signatures of the representatives of such Loan Party authorized to sign each Loan Document (in the case of a Borrower, including, without limitation, Notices of Borrowing, LIBOR Notices and all other notices under this Agreement and the other Loan Documents) to which such Loan Party is or will be a party and the other documents to be executed and delivered by such Loan Party in connection herewith and therewith, together with evidence of the incumbency of such authorized officers and (D) as to the matters set forth in Section 5.01(b);

(ix) a certificate of the chief financial officer of the Parent (A) attaching a copy of the Financial Statements and the Projections described in Section 6.01(g)(ii) hereof and certifying as to the compliance with the representations and warranties set forth in Section 6.01(g)(i) and Section 6.01(aa)(ii) and (B) certifying that after giving effect to all Loans to be made on the Effective Date, (1) the Availability plus Qualified Cash is not less than \$69,000,000 and (2) all accounts payable of the Loan Parties shall be at a level and in a condition that is consistent with past practices of the Parent and its Subsidiaries;

(x) a certificate of the chief financial officer of the Parent, certifying as to the solvency of the Loan Parties on a consolidated basis (after giving effect to the Loans made on the Effective Date);

(xi) a certificate of an Authorized Officer of the Borrower certifying that (A) the attached copies of the Material Contracts as in effect on the Effective Date are true, complete and correct copies thereof and (B) such agreements remain in full force and effect and that none of the Loan Parties has breached or defaulted in any of its obligations under such agreements;

(xii) a certificate of the appropriate official(s) of (A) the jurisdiction of organization of each Loan Party and (B) each jurisdiction of foreign qualification of each Loan Party in which such Loan Party owns or leases real property certifying as of a recent date not more than 30 days prior to the Effective Date as to the subsistence in good standing of, and the payment of taxes by, such Loan Party in such jurisdictions;

(xiii) an opinion of each of (A) Covington & Burling LLP, outside counsel to the Loan Parties, and (B) the General Counsel of the Loan Parties, in each case as to such matters as the Collateral Agent may reasonably request;

(xiv) evidence of the insurance coverage required by Section 7.01 and the terms of the Security Agreement, in each case, where requested by the Collateral Agent, with such endorsements as to the named insureds or loss payees thereunder as the Collateral Agent may reasonably request and providing that such policy may be terminated or canceled (by the insurer or the insured thereunder) only upon 30 days' (or 10 days in the case of non-payment premiums) prior written notice to the Collateral Agent and each such named insured or loss payee, together with evidence that such insurance policies are in full force and effect;

(xv) a landlord waiver, in form and substance satisfactory to the Collateral Agent and which may be included as a provision contained in the relevant Lease, executed by each landlord with respect to each of the Leases set forth on Schedule III to the Security Agreement (other than with respect to any leased location that does not have a formal written lease and the leased locations at which less than \$300,000 of Collateral is located); provided, that if the Loan Parties are unable to deliver landlord waivers on the Effective Date, the Loan Parties shall use commercially reasonable efforts to deliver landlord waivers executed by the landlord and by the applicable Loan Party pursuant to Section 7.01(l);

(xvi) evidence of the payment in full of all Indebtedness under the Existing Credit Facility, together with (A) a customary termination and release agreement with respect to the Existing Credit Facility and all related documents, duly executed by the Loan Parties and the Existing Lenders, (B) a termination of security interest in Intellectual Property for each assignment for security recorded by the Existing Lenders at the United States Patent and Trademark Office or the United States Copyright Office and covering any intellectual property of the Loan Parties, and (C) UCC-3 termination statements for all UCC-1 financing statements filed by the Existing Lenders and covering any portion of the Collateral;

(xvii) all Control Agreements that, in the reasonable judgment of the Agents, are required for the Loan Parties to comply with the Loan Documents as of the Effective Date, each duly executed by, in addition to the applicable Loan Party, the applicable financial institution;

(xviii) such other agreements, instruments, approvals, opinions and other documents, each reasonably satisfactory to the Agents in form and substance, as any Agent may reasonably request.

(e) Material Adverse Effect. The Collateral Agent shall have determined, in its reasonable judgment, that no event or development shall have occurred since December 31, 2014 which could reasonably be expected to have a Material Adverse Effect.

(f) Approvals. All consents, authorizations and approvals of, and filings and registrations with, and all other actions in respect of, any Governmental Authority or other Person required in connection with the making of the Loans shall have been obtained and shall be in full force and effect.

(g) Proceedings; Receipt of Documents. All proceedings in connection with the making of the initial Loans and the other transactions contemplated by this Agreement and the other Loan Documents, and all documents incidental hereto and thereto, shall be reasonably satisfactory to the Collateral Agent and its counsel, and the Collateral Agent and such counsel shall have received all such information and such counterpart originals or certified or other copies of such documents as the Collateral Agent or such counsel may reasonably request.

(h) Management Reference Checks. The Collateral Agent shall have received satisfactory reference checks for key management of each Loan Party.

Section 5.02 Conditions Precedent to All Loans. The obligation of any Agent or any Lender to make any Loan after the Effective Date is subject to the fulfillment, in a manner satisfactory to the Administrative Agent, of each of the following conditions precedent:

(a) Payment of Fees, Etc. The Borrower shall have paid all fees, costs and expenses then payable by the Borrower pursuant to this Agreement and the other Loan Documents, including, without limitation, Section 2.06 and Section 12.04 hereof.

(b) Representations and Warranties; No Event of Default. The following statements shall be true and correct, and the submission by the Borrower to the Administrative Agent of a Notice of Borrowing with respect to each such Loan, and the Borrower's acceptance of the proceeds of such Loan, shall each be deemed to be a representation and warranty by each Loan Party on the date of such Loan that: (i) the representations and warranties contained in Article VI and in each other Loan Document are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to materiality or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to materiality or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date), (ii) at the time of and after giving effect to the making of such Loan and the application of the proceeds thereof, no Default or Event of Default has occurred and is continuing or would result from the making of the Loan to be

made, on such date and (iii) the conditions set forth in this Section 5.02 have been satisfied as of the date of such request.

(c) Legality. The making of such Loan shall not contravene any law, rule or regulation applicable to any Secured Party.

(d) Notices. The Administrative Agent shall have received a Notice of Borrowing pursuant to Section 2.02 hereof.

Section 5.03 Conditions Subsequent to Effectiveness. As an accommodation to the Loan Parties, the Agents and the Lenders have agreed to execute this Agreement and to make the Loans on the Effective Date notwithstanding the failure by the Loan Parties to satisfy the conditions set forth below on or before the Effective Date. In consideration of such accommodation, the Loan Parties agree that, in addition to all other terms, conditions and provisions set forth in this Agreement and the other Loan Documents, including, without limitation, those conditions set forth in Section 5.01, the Loan Parties shall satisfy each of the conditions subsequent set forth below on or before the date applicable thereto (it being understood that (i) the failure by the Loan Parties to perform or cause to be performed any such condition subsequent on or before the date applicable thereto shall constitute an Event of Default and (ii) to the extent that the existence of any such condition subsequent would otherwise cause any representation, warranty or covenant in this Agreement or any other Loan Document to be breached, the Required Lenders hereby waive such breach for the period from the Effective Date until the date on which such condition subsequent is required to be fulfilled pursuant to this Section 5.03):

(a) Within 45 days following the Effective Date (or such longer period as the Collateral Agent may agree in its sole discretion), the Loan Parties shall deliver to the Agents:

(i) (A) a Dutch-law Guaranty by Avid GP BV and (B) such Dutch-law security documents as may be necessary to effectuate a pledge by Avid GP BV of a first-priority perfected security interest (under Dutch law) with respect to 65% of the Equity Interests of Avid CV, in each case (y) accompanied by an opinion of Dutch counsel as to such matters as the Collateral Agent may reasonably request and (z) which shall include an express limitation of the recourse of the Collateral Agent in respect to the Equity Interests of Avid CV to 65% of such Equity Interests;

(ii) a pledge by Avid Worldwide of a first-priority perfected security interest with respect to 65% of the Equity Interests in Avid GP BV, accompanied by an opinion of Dutch counsel as to such matters as the Collateral Agent may reasonably request; and

(iii) such amendments and/or modifications to the Governing Documents of Avid GP BV and Avid CV as may be necessary to permit or otherwise effectuate the foregoing.

(b) Use commercially reasonable efforts until the date that is 60 days following the Effective Date to (i) obtain inventor assignments of the patent applications identified as (w) 13/293,381 (filed 11/10/2011), (x) 14/525,278 (filed 10/28/2014), (y) 62/145,453 (filed

04/09/2015) and (z) 14/845,575 (filed 09/04/2015), (ii) record such inventor assignments with the United States Patent and Trademark Office, and (iii) provide reasonably satisfactory evidence to the Collateral Agent that such inventor assignments have been obtained and recorded.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES

Section 6.01 Representations and Warranties. Each Loan Party hereby represents and warrants to the Secured Parties as follows:

(a) Organization, Good Standing, Etc. Each Loan Party (i) is a corporation, limited liability company or limited partnership duly organized, validly existing and in good standing under the laws of the state or jurisdiction of its organization, (ii) has all requisite power and authority to conduct its business as now conducted and as presently contemplated and, in the case of the Borrower, to make the borrowings hereunder, and to execute and deliver each Loan Document to which it is a party, and to consummate the transactions contemplated thereby, and (iii) is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except (solely for the purposes of this subclause (iii)) where the failure to be so qualified and in good standing could reasonably be expected to have a Material Adverse Effect.

(b) Authorization, Etc.

The execution, delivery and performance by each Loan Party of each Loan Document to which it is or will be a party, (i) have been duly authorized by all necessary action, (ii) do not and will not contravene (A) any of its Governing Documents, (B) any applicable Requirement of Law or (C) any Material Contract binding on or otherwise affecting it or any of its properties, (iii) do not and will not result in or require the creation of any Lien (other than pursuant to any Loan Document) upon or with respect to any of its properties, and (iv) do not and will not result in any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal of any permit, license, authorization or approval applicable to its operations or any of its properties, except, in the case of clauses (ii)(B), (ii)(C) and (iv), to the extent where such contravention, default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal could not reasonably be expected to have a Material Adverse Effect.

(c) Governmental Approvals. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required in connection with the due execution, delivery and performance by any Loan Party of any Loan Document to which it is or will be a party other than filings and recordings with respect to Collateral to be made, or otherwise delivered to the Collateral Agent for filing or recordation, on the Effective Date.

(d) Enforceability of Loan Documents. This Agreement is, and each other Loan Document to which any Loan Party is or will be a party, when delivered hereunder, will be, a legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency,

reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

(e) Capitalization. On the Effective Date, after giving effect to the transactions contemplated hereby to occur on the Effective Date, (i) the issued and outstanding Equity Interests of each of the direct Subsidiaries of the Loan Parties are as set forth on Schedule 6.01(e)(i) and (ii) the organizational structure of the Parent and each of its Subsidiaries (including the percentage ownership interests of the Parent and its Subsidiaries) is as set forth on Schedule 6.01(e)(ii). As of the Effective Date, all of the issued and outstanding shares of Equity Interests of the Subsidiaries of the Loan Parties have been validly issued and are fully paid and nonassessable, and if applicable, the holders thereof are not entitled to any preemptive, first refusal or other similar rights except as set forth on Schedule 6.01(e). All Equity Interests of such Subsidiaries of the Parent are owned, directly or indirectly, by the Parent free and clear of all Liens (other than Permitted Specified Liens). Except as described on Schedule 6.01(e), as of the Effective Date, there are no outstanding obligations of the Parent or any other Loan Parties convertible into or exchangeable for, or warrants, options or other rights for the purchase or acquisition from the Parent or any of its Subsidiaries, or other obligations of the Parent or any of its Subsidiaries to issue, directly or indirectly, any shares of Equity Interests of any Subsidiary of the Parent.

(f) Litigation. Except as set forth in Schedule 6.01(f), there is no pending or, to the knowledge of any Loan Party, threatened (in writing) action, suit or proceeding affecting any Loan Party or any of its properties before any court or other Governmental Authority or any arbitrator that (i) could reasonably be expected to have a Material Adverse Effect or (ii) relates to this Agreement or any other Loan Document or any transaction contemplated hereby or thereby.

(g) Financial Statements.

(i) The Financial Statements, copies of which have been delivered to each Agent and each Lender, fairly present in all material respects the consolidated financial condition of the Parent and its Subsidiaries as at the respective dates thereof and the consolidated results of operations of the Parent and its Subsidiaries for the fiscal periods ended on such respective dates, all in accordance with GAAP (subject, in the case of interim statements, to the absence of footnotes and subject to audit adjustments). All material indebtedness and other material liabilities (including, without limitation, Indebtedness, liabilities for taxes, long-term leases and other unusual forward or long-term commitments), direct or contingent, of the Parent and its Subsidiaries, to the extent required by GAAP to be set forth, are set forth in the Financial Statements. Since December 31, 2014 no event or development has occurred that has had or could reasonably be expected to have a Material Adverse Effect.

(ii) The Parent has heretofore furnished to each Agent and each Lender (A) projected quarterly balance sheets, income statements and statements of cash flows of the Parent and its Subsidiaries for the period from January 1, 2016, through December 31, 2020, and (B) projected annual balance sheets, income statements and statements of cash flows of the Parent and its Subsidiaries for the Fiscal Years ending in 2016 through 2020.

(h) Compliance with Law, Etc. No Loan Party or any of its Subsidiaries is in violation of (i) any of its Governing Documents, (ii) any Requirement of Law, except where the failure to so comply could not reasonably be expected to have a Material Adverse Effect, or (iii) any term of any Contractual Obligation (including, without limitation, any Material Contract) binding on or otherwise affecting it or any of its properties, except where the failure to so comply could not reasonably be expected to have a Material Adverse Effect, and as of the Effective Date no material default or event of default has occurred and is continuing thereunder.

(i) ERISA. Except as set forth on Schedule 6.01(i), (i) each Employee Plan is in substantial compliance with ERISA and the Internal Revenue Code, (ii) no Termination Event has occurred nor is reasonably expected to occur with respect to any Employee Plan, (iii) if required to be filed, the most recent annual report (Form 5500 Series) with respect to each Employee Plan, including any required Schedule B (Actuarial Information) thereto, have been filed with the Internal Revenue Service and delivered to the Agents and is complete and correct and fairly presents the funding status of such Employee Plan, and since the date of such report there has been no material adverse change in such funding status, (iv) copies of each agreement entered into with the PBGC, the U.S. Department of Labor or the Internal Revenue Service with respect to any Employee Plan (if any) have been delivered to the Agents, (v) no Employee Plan had an accumulated or waived funding deficiency or permitted decrease which would create a deficiency in its funding standard account or has applied for an extension of any amortization period within the meaning of Section 412 of the Internal Revenue Code at any time during the previous 60 months, and (vi) no Lien imposed under the Internal Revenue Code or ERISA exists or is likely to arise on account of any Employee Plan within the meaning of Section 412 of the Internal Revenue Code. Except as set forth on Schedule 6.01(i), no Loan Party or any of its ERISA Affiliates has incurred any withdrawal liability under ERISA with respect to any Multiemployer Plan, or is aware of any facts indicating that it or any of its ERISA Affiliates may in the future incur any such withdrawal liability. No Loan Party or any of its ERISA Affiliates nor, to the knowledge of any Loan Party, any fiduciary of any Employee Plan has (i) engaged in a nonexempt prohibited transaction described in Sections 406 of ERISA or 4975 of the Internal Revenue Code with respect to an Employee Plan, (ii) failed to pay any required installment or other payment required under Section 412 of the Internal Revenue Code on or before the due date for such required installment or payment, (iii) engaged in a transaction within the meaning of Section 4069 of ERISA or (iv) incurred any liability to the PBGC which remains outstanding other than the payment of premiums, and there are no premium payments which have become due which are unpaid. There are no pending or, to the knowledge of any Loan Party, threatened claims, actions, proceedings or lawsuits (other than claims for benefits in the normal course) asserted or instituted against (i) any Employee Plan or its assets, (ii) any fiduciary with respect to any Employee Plan, or (iii) any Loan Party or any of its ERISA Affiliates with respect to any Employee Plan. Except as required by Section 4980B of the Internal Revenue Code, no Loan Party or any of its ERISA Affiliates maintains an employee welfare benefit plan (as defined in Section 3(1) of ERISA) which provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of any Loan Party or any of its ERISA Affiliates or coverage after a participant's termination of employment or, if later, the end of a former employee's severance period.

(j) Taxes, Etc. (i) All foreign, Federal and material provincial, state and local tax returns and other reports required by applicable Requirements of Law to be filed by any

Loan Party have been filed, or extensions have been obtained (except for such returns in respect of taxes not exceeding the amount set forth in clause (ii) below), and (ii) all taxes, assessments and other governmental charges imposed upon any Loan Party or any property of any Loan Party in an aggregate amount for all such taxes, assessments and other governmental charges exceeding \$500,000 and which have become due and payable on or prior to the date hereof have been paid, except to the extent contested in good faith by proper proceedings which stay the imposition of any penalty, fine or Lien resulting from the non-payment thereof and with respect to which adequate reserves have been set aside for the payment thereof on the Financial Statements in accordance with GAAP.

(k) Regulations T, U and X. No Loan Party is or will be engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation T, U or X), and no proceeds of any Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or for any purpose that violates, or is inconsistent with, the provisions of Regulations T, U and X.

(l) Nature of Business.

(i) No Loan Party is engaged in any business other than as set forth on Schedule 6.01(l) (and in the case of Avid Technology Worldwide, Inc., as set forth in clause (ii) below) and business activities reasonably related or incidental thereto.

(ii) Neither Avid Worldwide, Avid GP BV nor Avid CV have any material liabilities (other than liabilities arising under the Loan Documents and the Specified Intercompany Loans) and, in the case of Avid Worldwide, the liabilities of its Korean Branch), own any material assets (other than the Equity Interests and rights under the Specified Intercompany Loans held by such Persons on the Effective Date and, in the case of Avid Worldwide, the assets of its Korean Branch) or engage in any operations or business (other than the ownership of the Subsidiaries and rights under the Specified Intercompany Loans owned by such Persons on the Effective Date and, in the case of Avid Worldwide, the operations and business of its Korean Branch).

(m) Adverse Agreements, Etc. No Loan Party or any of its Subsidiaries is a party to any Contractual Obligation or subject to any restriction or limitation in any Governing Document or any judgment, order, regulation, ruling or other requirement of a court or other Governmental Authority, which (either individually or in the aggregate) has, or in the future could reasonably be expected (either individually or in the aggregate) to have, a Material Adverse Effect.

(n) Permits, Etc. Each Loan Party has, and is in compliance with, all permits, licenses, authorizations, approvals, entitlements and accreditations required for such Person lawfully to own, lease, manage or operate, or to acquire, each business and Facility currently owned, leased, managed or operated, or to be acquired, by such Person, except to the extent the failure to have or be in compliance therewith could not reasonably be expected to have a Material Adverse Effect. No condition exists or event has occurred which, in itself or with the giving of notice or lapse of time or both, would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such permit, license, authorization, approval, entitlement or accreditation, and there is no claim

that any thereof is not in full force and effect, except to the extent any such condition, event or claim could not reasonably be expected to have a Material Adverse Effect.\

(o) Properties. Each Loan Party has good and legal title to, valid leasehold interests in, or valid licenses to use, all property and assets material to its business, free and clear of all Liens, except Permitted Liens (except for defects in title that do not materially interfere with its ability to conduct its business as currently conducted). All such properties and assets are in good working order and condition, ordinary wear and tear and casualty and condemnation excepted.

(p) Employee and Labor Matters. There is (i) no unfair labor practice complaint pending or, to the best knowledge of any Loan Party, threatened against any Loan Party before any Governmental Authority and no grievance or arbitration proceeding pending or threatened against any Loan Party which arises out of or under any collective bargaining agreement, (ii) no strike, labor dispute, slowdown, stoppage or similar action or grievance pending or threatened against any Loan Party or (iii) to the best knowledge of each Loan Party, no union representation question existing with respect to the employees of any Loan Party and no union organizing activity taking place with respect to any of the employees of any Loan Party. No Loan Party or any of its ERISA Affiliates has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act ("WARN") or similar state law, which remains unpaid or unsatisfied. The hours worked and payments made to employees of any Loan Party have been in substantial compliance with the Fair Labor Standards Act or any other applicable legal requirements. All material payments due from any Loan Party on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of such Loan Party.

(q) Environmental Matters. Except as set forth on Schedule 6.01(q), (i) the operations of each Loan Party are in compliance in all material respects with all Environmental Laws; (ii) there has been no Release at any of the properties owned or operated by any Loan Party or, to the knowledge of any Loan Party, a predecessor in interest, or at any disposal or treatment facility which received Hazardous Materials generated by any Loan Party or any predecessor in interest which could reasonably be expected to have a Material Adverse Effect; (iii) no Environmental Action has been asserted against any Loan Party or, to the knowledge of any Loan Party, any predecessor in interest nor does any Loan Party have knowledge or notice of any threatened or pending Environmental Action against any Loan Party or, to the knowledge of any Loan Party, any predecessor in interest which, in each case, could reasonably be expected to have a Material Adverse Effect; (iv) to the knowledge of any Loan Party, no Environmental Actions have been asserted against any facilities that may have received Hazardous Materials generated by any Loan Party or any predecessor in interest which could reasonably be expected to have a Material Adverse Effect; (v) no property now or formerly owned or operated by a Loan Party has been used as a treatment or disposal site for any Hazardous Material for which such Loan Party could reasonably be expected to be liable under Environmental Laws or to perform a Remedial Action; (vi) no Loan Party has failed to report to the proper Governmental Authority any Release which is required to be so reported by any Environmental Laws which could reasonably be expected to have a Material Adverse Effect; (vii) each Loan Party holds all licenses, permits and approvals required under any Environmental Laws in connection with the operation of the business carried on by it, except for such licenses, permits and approvals as to which a Loan Party's failure to maintain or comply with could not reasonably be expected to have a Material Adverse

Effect; and (viii) no Loan Party has received any notification pursuant to any Environmental Laws that (A) any work, repairs, construction or Capital Expenditures are required to be made as a condition of continued compliance with any Environmental Laws, or any license, permit or approval issued pursuant thereto or (B) any license, permit or approval referred to above is about to be reviewed, made, subject to limitations or conditions, revoked, withdrawn or terminated, in each case, except as could not reasonably be expected to have a Material Adverse Effect.

(r) Insurance. Each Loan Party maintains the insurance and required services and financial assurance as required by law and as required by Section 7.01(h). Schedule 6.01(r) sets forth a list of all insurance maintained by each Loan Party on the Effective Date.

(s) Use of Proceeds. The proceeds of the Loans shall be used to (a) refinance the Existing Credit Facility, (b) pay fees and expenses in connection with the transactions contemplated hereby and (c) fund working capital and general corporate purposes of the Borrower and its Subsidiaries.

(t) Solvency. After giving effect to the transactions contemplated by this Agreement and before and after giving effect to each Loan, the Loan Parties on a consolidated basis are, Solvent.

(u) Intellectual Property. Except as set forth on Schedule 6.01(u), each Loan Party owns or licenses or otherwise has the right to use all Intellectual Property rights that are necessary for the operation of its business, without infringement upon or conflict with the rights of any other Person with respect thereto, except for such failures, infringements and conflicts which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Set forth on Schedule 6.01(u) is a complete and accurate list as of the Effective Date of (i) each item of Registered Intellectual Property owned by each Loan Party; and (ii) each material Intellectual Property Contract to which each Loan Party is bound (excluding any non-exclusive license of software that is widely commercially available). To the knowledge of each Loan Party, no trademark or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party infringes upon or conflicts with any rights owned by any other Person, and no claim or litigation regarding any of the foregoing is pending or threatened, except for such infringements and conflicts which could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. To the knowledge of each Loan Party, no patent, invention, device, application, principle or any statute, law, rule, regulation, standard or code pertaining to Intellectual Property is pending or proposed, which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(v) Material Contracts. Set forth on Schedule 6.01(v) is a complete and accurate list as of the Effective Date of all Material Contracts of each Loan Party. Each such Material Contract (i) is in full force and effect and is binding upon and enforceable against each Loan Party that is a party thereto and, to the knowledge of such Loan Party, all other parties thereto in accordance with its terms, (ii) has not been otherwise amended or modified, except as otherwise permitted to be amended and modified in accordance with this Agreement, and (iii) is not in material default due to the action of any Loan Party or, to the knowledge of any Loan Party, any other party thereto.

(w) Investment Company Act. None of the Loan Parties is (i) an "investment company" or an "affiliated person" or "promoter" of, or "principal underwriter" of or for, an "investment company", as such terms are defined in the Investment Company Act of 1940, as amended, or (ii) subject to regulation under any Requirement of Law that limits in any respect its ability to incur Indebtedness or which may otherwise render all or a portion of the Obligations unenforceable.

(x) Customers and Suppliers. There exists no actual or threatened termination, cancellation or limitation of, or modification to or change in, the business relationship between (i) any Loan Party, on the one hand, and any customer or any group thereof, on the other hand, whose agreements with any Loan Party are individually or in the aggregate material to the business or operations of such Loan Party, or (ii) any Loan Party, on the one hand, and any supplier or any group thereof, on the other hand, whose agreements with any Loan Party are individually or in the aggregate material to the business or operations of such Loan Party; and there exists no present state of facts or circumstances that could give rise to or result in any such termination, cancellation, limitation, modification or change.

(y) Anti-Money Laundering and Anti-Terrorism Laws.

(i) To the knowledge of the Loan Parties, none of the Loan Parties, nor any Affiliate of any of the Loan Parties, has violated in the past six years or is in violation of any of the Anti-Money Laundering and Anti-Terrorism Laws or has engaged in the past six years or is engaging in or attempting to engage in any transaction that violates, evades or avoids any of the Anti-Money Laundering and Anti-Terrorism Laws.

(ii) None of the Loan Parties, nor, to the knowledge of the Loan Parties, any Affiliate of any of the Loan Parties, any officer or director of any of the Loan Parties, or any of the Loan Parties' respective agents acting or benefiting in any capacity in connection with the Loans or other transactions hereunder, is a Blocked Person.

(iii) To the knowledge of the Loan Parties, none of the Loan Parties, nor any of their agents acting in any capacity in connection with the Loans or other transactions hereunder, (A) conducts any business with or for the direct benefit of any Blocked Person or engages in making or receiving any contribution of funds, goods or services to, from or for the direct benefit of any Blocked Person, or (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked or subject to blocking pursuant to any OFAC Sanctions Programs except to the extent authorized under the Anti-Money Laundering and Anti-Terrorism Laws.

(z) Anti-Bribery and Anti-Corruption Laws.

(i) Each Loan Party and its Subsidiaries are in compliance with the U.S. Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act and the anti-bribery and anti-corruption laws applicable to such Loan Party and its Subsidiaries (collectively, the "Anti-

Corruption Laws"), except where the failure to so comply could not reasonably be expected to have a Material Adverse Effect.

(ii) Neither Loan Party nor any of its Subsidiaries has, within the past five years, violated the Anti-Corruption Laws in a manner that could reasonably be expected to result in a material liability on the part of such Loan Party or any of its Subsidiaries.

(iii) To the knowledge of the Loan Parties, there are, and have been, no allegations, investigations or inquiries by any Governmental Authority with regard to a potential violation of any Anti-Corruption Law by any of the Loan Parties or any of their respective current or former directors, officers, employees, stockholders or agents, or other persons acting or purporting to act on their behalf, in each case, that could reasonably be expected to result in a material liability on the part of a Loan Party or its Subsidiaries.

(iv) Each Loan Party and its Subsidiaries have adopted, implemented and maintain anti-bribery and anti-corruption policies and procedures that are reasonably designed to ensure compliance with the Anti-Corruption Laws.

(aa) Full Disclosure.

(i) Each Loan Party has disclosed to the Agents all agreements, instruments and corporate or other restrictions to which it is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the written reports, financial statements, certificates or other written information furnished by or on behalf of any Loan Party to the Agents (other than forward-looking information, budgets and projections and information of a general economic nature and general information about the Loan Parties' and their Subsidiaries' industry) in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) taken as a whole contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which it was made, not materially misleading.

(ii) Projections, have been prepared on a reasonable basis and in good faith based on assumptions and estimates that are believed by senior management of the Loan Parties to be reasonable at the time such Projections were prepared and information believed by the Loan Parties to have been accurate based upon the information available to the Loan Parties at the time such Projections were furnished to the Lenders, and Parent is not aware of any facts or information that would lead it to believe that such Projections are incorrect or misleading in any material respect at the time of delivery to the Agents and the Lenders; it being understood that (A) Projections are by their nature subject to significant uncertainties and contingencies, many of which are beyond the Loan Parties' control, (B) actual results may differ materially from the Projections and such variations may be material and (C) the Projections are not a guarantee of performance.

## ARTICLE VII

### COVENANTS OF THE LOAN PARTIES

Section 7.01 Affirmative Covenants. Until the Termination Date, each Loan Party will, unless the Required Lenders shall otherwise consent in writing:

(a) Reporting Requirements. Furnish to each Agent and each Lender:

(i) as soon as available, and in any event within 30 days after the end of each fiscal month of the Parent and its Subsidiaries during which average Availability plus Qualified Cash for such month does not exceed \$30,000,000, internally prepared consolidated and consolidating (presented for domestic Persons and foreign Persons, each taken as a whole) balance sheets, statements of operations and retained earnings and statements of cash flows as at the end of such fiscal month, and for the period commencing at the end of the immediately preceding Fiscal Year and ending with the end of such fiscal month, setting forth in each case in comparative form the figures for the corresponding date or period set forth in the financial statements for the immediately preceding Fiscal Year, all in reasonable detail and certified by an Authorized Officer of the Parent as fairly presenting, in all material respects, the financial position of the Parent and its Subsidiaries as at the end of such fiscal month and the results of operations, retained earnings and cash flows of the Parent and its Subsidiaries for such fiscal month and for such year-to-date period, in accordance with GAAP applied in a manner consistent with that of the most recent audited financial statements furnished to the Agents and the Lenders, subject to the absence of footnotes and normal quarter-end and year-end adjustments;

(ii) as soon as available and in any event within 45 days after the end of each fiscal quarter of the Parent and its Subsidiaries commencing with the first fiscal quarter of the Parent and its Subsidiaries ending after the Effective Date, consolidated and consolidating (presented for domestic Persons and foreign Persons, each taken as a whole) balance sheets, statements of operations and retained earnings and statements of cash flows of the Parent and its Subsidiaries as at the end of such quarter, and for the period commencing at the end of the immediately preceding Fiscal Year and ending with the end of such quarter, setting forth in each case in comparative form the figures for the corresponding date or period set forth in (A) the financial statements for the immediately preceding Fiscal Year and (B) the Projections (on a consolidated basis), all in reasonable detail and certified by an Authorized Officer of the Parent as fairly presenting, in all material respects, the financial position of the Parent and its Subsidiaries on a consolidated basis as of the end of such quarter and the results of operations and cash flows of the Parent and its Subsidiaries for such quarter and for such year-to-date period, in accordance with GAAP applied in a manner consistent with that of the most recent audited financial statements of the Parent and its Subsidiaries furnished to the Agents and the Lenders, subject to the absence of footnotes and normal year-end adjustments;

(iii) as soon as available, and in any event within 90 days after the end of each Fiscal Year of the Parent and its Subsidiaries, consolidated and consolidating (presented for domestic Persons and foreign Persons, each taken as a whole) balance sheets, statements of

operations and retained earnings and statements of cash flows of the Parent and its Subsidiaries as at the end of such Fiscal Year, setting forth in each case in comparative form the figures for the corresponding date or period set forth in (A) the financial statements for the immediately preceding Fiscal Year, and (B) the Projections (on a consolidated basis), all in reasonable detail and prepared in accordance with GAAP, and accompanied by a report and an opinion, prepared in accordance with generally accepted auditing standards, of independent certified public accountants of recognized standing selected by the Parent and reasonably satisfactory to the Agents (provided that the Agents agree that Deloitte, BDO, Ernst & Young, PWC, KPMG, McGladrey, Grant Thornton and Crowe Horwath are satisfactory to the Agents) (which opinion shall be without (1) a "going concern" or like qualification or exception, (2) any qualification or exception (other than as a result of the maturity date of any Indebtedness occurring within 12 months of the date of such audit) as to the scope of such audit, or (3) any qualification which relates to the treatment or classification of any item and which, as a condition to the removal of such qualification, would require an adjustment to such item, the effect of which would be to cause any noncompliance with the provisions of Section 7.03);

(iv) simultaneously with the delivery of the financial statements of the Parent and its Subsidiaries required by clauses (i), (ii) and (iii) of this Section 7.01(a), a certificate of an Authorized Officer of the Parent (a "Compliance Certificate"):

(A) stating that such Authorized Officer has reviewed the provisions of this Agreement and the other Loan Documents and has made or caused to be made under his or her supervision a review of the condition and operations of the Parent and its Subsidiaries during the period covered by such financial statements with a view to determining whether the Parent and its Subsidiaries were in compliance with all of the provisions of this Agreement and such Loan Documents at the times such compliance is required hereby and thereby, and that such review has not disclosed, and such Authorized Officer has no knowledge of, the occurrence and continuance during such period of an Event of Default or Default or, if an Event of Default or Default had occurred and continued or is continuing, describing the nature and period of existence thereof and the action which the Parent and its Subsidiaries propose to take or have taken with respect thereto,

(B) in the case of the delivery of the financial statements of the Parent and its Subsidiaries required by clauses (ii) and (iii) of this Section 7.01(a), (1) attaching a schedule showing the calculation of the financial covenants specified in Section 7.03 and (2) including (y) a discussion and analysis of the financial condition and results of operations of the Parent and its Subsidiaries for the portion of the Fiscal Year then elapsed (provided, that the discussion and analysis of the financial condition and results of operations of the Parent and its Subsidiaries included in any Form 10-Q or Form 10-K filed by the Borrower shall be deemed to satisfy the requirements of this clause (y)) and (z) discussing the reasons for any significant variations from the Projections for such period and the figures for the corresponding period in the previous Fiscal Year, and

(C) in the case of the delivery of the financial statements of the Parent and its Subsidiaries required by clause (iii) of this Section 7.01(a), attaching (1) a summary of all material insurance coverage maintained as of the date thereof by any Loan Party, together with such other related documents and information as the Administrative Agent may reasonably require,

(2) the calculation of the Excess Cash Flow in accordance with the terms of Section 2.05(c)(i) and (3) confirmation that there have been no changes to the information contained in each of the Perfection Certificate delivered on the Effective Date or the date of the most recently updated Perfection Certificate delivered pursuant to this clause (iv) and/or attaching an updated Perfection Certificate identifying any such changes to the information contained therein;

(v) as soon as available and in any event within 15 days after the end of each fiscal month of the Parent and its Subsidiaries during which average Availability plus Qualified Cash for such month does not exceed \$30,000,000, reports in form and detail satisfactory to the Agents and certified by an Authorized Officer of the Borrower as being accurate and complete (A) listing all Accounts of the Loan Parties as of such day, which shall include the amount and age of each such Account, showing separately those which are more than 30, 60, 90 and 120 days old and such other information as any Agent may reasonably request and (B) listing all accounts payable of the Loan Parties as of each such day which shall include the amount and age of each such account payable and such other information as any Agent may reasonably request;

(vi) as soon as available and in any event within 2 Business Days after the end of each week, a statement containing the cash balances maintained by the Parent and its Subsidiaries as of the end of such week in each country in which the Parent and its Subsidiaries do business;

(vii) as soon as available and in any event not later than 60 days after the end of each Fiscal Year, a certificate of an Authorized Officer of the Parent (A) attaching Projections for the Parent and its Subsidiaries, supplementing and superseding the Projections previously required to be delivered pursuant to this Agreement, prepared on a quarterly basis and otherwise in form and substance reasonably satisfactory to the Agents (it being understood and agreed that the form of the Projections delivered on or prior to the Effective Date are satisfactory), for the immediately succeeding Fiscal Year for the Parent and its Subsidiaries and (B) certifying that the representations and warranties set forth in Section 6.01(aa)(ii) are true and correct with respect to the Projections;

(viii) promptly after submission to any Governmental Authority, all material documents and material information furnished to such Governmental Authority in connection with any investigation of any Loan Party involving allegations of wrongdoing against any Loan Party (other than routine inquiries by such Governmental Authority) to the extent disclosure by a Loan Party is not prohibited by any Requirement of Law;

(ix) promptly, and in any event within 3 Business Days, upon any Authorized Officer of the Borrower obtaining knowledge of the occurrence of an Event of Default or Default or the occurrence of any event or development that would reasonably be expected to have a Material Adverse Effect, the written statement of an Authorized Officer of the Borrower setting forth the details of such Event of Default or Default or other event or development having a Material Adverse Effect and the action which the affected Loan Party proposes to take with respect thereto;

(x) (A) as soon as reasonably practicable and in any event within 10 days after any Loan Party or any ERISA Affiliate thereof knows or has reason to know that (1) any Reportable Event with respect to any Employee Plan has occurred, (2) any other Termination

Event with respect to any Employee Plan has occurred, or (3) an accumulated funding deficiency has been incurred or an application has been made to the Secretary of the Treasury for a waiver or modification of the minimum funding standard (including installment payments) or an extension of any amortization period under Section 412 of the Internal Revenue Code with respect to an Employee Plan, a statement of an Authorized Officer of the Borrower setting forth the details of such occurrence and the action, if any, which such Loan Party or such ERISA Affiliate proposes to take with respect thereto, (B) promptly and in any event within 5 Business Days after receipt thereof by any Loan Party or any ERISA Affiliate thereof from the PBGC, copies of each notice received by any Loan Party or any ERISA Affiliate thereof of the PBGC's intention to terminate any Plan or to have a trustee appointed to administer any Plan, (C) promptly and in any event within 10 Business Days after the filing thereof with the Internal Revenue Service if requested by any Agent, copies of each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) with respect to each Employee Plan, (D) promptly and in any event within 5 Business Days after any Loan Party or any ERISA Affiliate thereof knows or has reason to know that a required installment within the meaning of Section 412 of the Internal Revenue Code has not been made when due with respect to an Employee Plan, (E) promptly and in any event within 5 Business Days after receipt thereof by any Loan Party or any ERISA Affiliate thereof from a sponsor of a Multiemployer Plan or from the PBGC, a copy of each notice received by any Loan Party or any ERISA Affiliate thereof concerning the imposition or amount of withdrawal liability under Section 4202 of ERISA or indicating that such Multiemployer Plan may enter reorganization status under Section 4241 of ERISA, and (F) promptly and in any event within 10 Business Days after any Loan Party or any ERISA Affiliate thereof sends notice of a plant closing or mass layoff (as defined in WARN) to employees, copies of each such notice sent by such Loan Party or such ERISA Affiliate thereof;

(xi) promptly after the commencement thereof but in any event not later than 5 Business Days after service of process with respect thereto on, or the obtaining of knowledge thereof by, any Authorized Officer of any Loan Party, notice of each action, suit or proceeding before any court or other Governmental Authority or other regulatory body or any arbitrator which could reasonably be expected to have a Material Adverse Effect;

(xii) as soon as possible and in any event within 5 days after execution, receipt or delivery thereof, copies of any material notices that any Loan Party executes or receives in connection with any Material Contract;

(xiii) as soon as possible and in any event within 5 days after execution, receipt or delivery thereof, copies of any material notices that any Loan Party executes or receives in connection with the sale or other Disposition of the Equity Interests of, or all or substantially all of the assets of, any Loan Party;

(xiv) as soon as available and in any event within 20 days after the end of each fiscal month of the Parent and its Subsidiaries commencing with the first fiscal month of the Parent and its Subsidiaries ending after the Effective Date, reports in form and detail satisfactory to the Agents and certified by an Authorized Officer of the Borrower as being accurate and complete summarizing (A) all restructuring charges and non-recurring costs incurred by the Parent and its Subsidiaries for the prior fiscal month that correspond to the categories described on Schedule 1.01

(C) and (B) the savings realized by the Parent and its Subsidiaries on an annualized basis that correspond to the categories of charges and costs described on Schedule 1.01(C);

(xv) promptly after the sending or filing thereof, copies of all statements, reports and other information any Loan Party sends to any holders of its Convertible Notes or its public stockholders or files with the SEC; provided that filing with the SEC or publishing on the Borrower's website any such statement, report or other information satisfies this requirement;

(xvi) [reserved];

(xvii) promptly upon request, any certification or other evidence requested from time to time by any Lender in its sole discretion, confirming the Borrower's compliance with Section 7.02(q);

(xviii) [reserved];

(xix) simultaneously with the delivery of the financial statements of the Parent and its Subsidiaries required by clauses (i), (ii) and (iii) of this Section 7.01(a), if, as a result of any change in accounting principles and policies from those used in the preparation of the Financial Statements that is permitted by Section 7.02(q), the consolidated financial statements of the Parent and its Subsidiaries delivered pursuant to clauses (i), (ii) and (iii) of this Section 7.01(a) will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in form and substance reasonably satisfactory to the Agents; and

(xx) promptly upon request, such other information (other than information subject to confidentiality obligations with a third party or attorney-client privilege or the sharing of which information is prohibited by applicable law, in which case, to the extent reasonably practical to provide the same, redacted summaries of such information shall be provided) concerning the condition or operations, financial or otherwise, of any Loan Party as any Agent may from time to time reasonably request.

(b) Additional Guarantors and Collateral Security. Cause:

(i) each Subsidiary of any Loan Party not in existence on the Effective Date that is not an Excluded Subsidiary to execute and deliver to the Collateral Agent promptly and in any event within 10 Business Days (20 Business Days in the case of the matters set forth in clause (C) below and deliverables with respect to Foreign Subsidiaries) (or, in each case, such longer date as the Collateral Agent may agree to in its sole discretion) after the formation, acquisition or change in status thereof (except as otherwise provided in Section 7.01(m) and Section 8.01(b)), (A) a Joinder Agreement, pursuant to which such Subsidiary shall be made a party to this Agreement as a Guarantor, (B) a supplement to the Security Agreement, together with (1) certificates, if any, evidencing all of the Equity Interests of any Person owned by such Subsidiary required to be pledged

under the terms of the Security Agreement, (2) undated stock powers for such Equity Interests executed in blank, and (3) such opinions of counsel as the Collateral Agent may reasonably request, (C) to the extent required under the terms of this Agreement, one or more Mortgages creating on the fee-owned real property of such Subsidiary a perfected, first priority Lien (in terms of priority, subject only to Permitted Specified Liens) on such real property and such other Real Property Deliverables as may be reasonably required by the Collateral Agent with respect to each such real property and (D) such other agreements, instruments, approvals or other documents reasonably requested by the Collateral Agent in order to create, perfect, establish the first priority of or otherwise protect any Lien purported to be covered by any such Security Agreement or Mortgage or otherwise to effect the intent that such Subsidiary shall become bound by all of the terms, covenants and agreements contained in the Loan Documents and that substantially all property and assets of such Subsidiary shall become Collateral for the Obligations; and

(ii) each owner (that is a Loan Party) of the Equity Interests of any such Subsidiary to execute and deliver promptly and in any event within 10 Business Days (or 20 Business Days with respect to Foreign Subsidiaries), or such longer date as the Collateral Agent may agree to in its sole discretion, after the formation or acquisition of such Subsidiary a Pledge Amendment (as defined in the Security Agreement), together with (A) certificates, if any, evidencing all of the Equity Interests of such Subsidiary required to be pledged under the terms of the Security Agreement, (B) undated stock powers or other appropriate instruments of assignment for such certificated Equity Interests executed in blank, (C) such opinions of counsel as the Collateral Agent may reasonably request and (D) such other agreements, instruments, approvals or other documents reasonably requested by the Collateral Agent.

Notwithstanding the foregoing, (A) no Loan Party shall be required to take the actions set forth in this Section 7.01(b) in respect of any Subsidiary formed after the Effective Date in connection with a Permitted Acquisition or Permitted Investment prior to the consummation of such Permitted Acquisition or Permitted Investment so long as no assets (other than immaterial assets and its rights under the related agreement for such Permitted Acquisition or Permitted Investment) are transferred to, or owned by, such Subsidiary and (B) no Excluded Subsidiary shall be required to become a Guarantor hereunder or be required to have its Equity Interests pledged to the Collateral Agent (and, as such, shall not be required to deliver the documents required by clause (i) above); provided, however, that if the Equity Interests of a first-tier Foreign Subsidiary are owned by a Loan Party, upon the request of the Collateral Agent, such Loan Party shall deliver all such documents, instruments, agreements (including, without limitation, at the reasonable request of the Collateral Agent, a pledge agreement governed by the laws of the jurisdiction of the organization of such Foreign Subsidiary) and certificates, if any, described in clause (ii) above to the Collateral Agent, and take all commercially reasonable actions reasonably requested by the Collateral Agent or otherwise necessary to grant and to perfect a first-priority Lien (subject to Permitted Specified Liens) in favor of the Collateral Agent, for the benefit of the Agents and the Lenders, in 65% of the voting Equity Interests of such Foreign Subsidiary and 100% of all other Equity Interests of such Foreign Subsidiary owned by such Loan Party.

(c) Compliance with Laws; Payment of Taxes.

(i) Comply, and cause each of its Subsidiaries to comply, with all Requirements of Law (including, without limitation, all Environmental Laws), judgments and awards (including any settlement of any claim that, if breached, could give rise to any of the foregoing), except to the extent the failure to so comply could not reasonably be expected to have a Material Adverse Effect.

(ii) Pay, and cause each of its Subsidiaries to pay, in full before delinquency or before the expiration of any extension period, all taxes, assessments and other related governmental charges imposed upon any Loan Party or any of its Subsidiaries or any property of any Loan Party or any of its Subsidiaries to the extent the aggregate amount for all such taxes, assessments and other governmental charges exceeds \$1,000,000, except to the extent contested in good faith by proper proceedings which stay the imposition of any penalty, fine or Lien resulting from the non-payment thereof and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP.

(d) Preservation of Existence, Etc. Except as otherwise permitted under Section 7.02(c), maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, its existence, rights and privileges, and become or remain, and cause each of its Subsidiaries to become or remain, duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except to the extent that the failure to be so qualified or in good standing could not reasonably be expected to have a Material Adverse Effect.

(e) Keeping of Records and Books of Account. Keep, and cause each of its Subsidiaries to keep, adequate records and books of account, with complete (in all material respects) entries made to permit the preparation of financial statements in accordance with GAAP.

(f) Inspection Rights. Subject to the limitations set forth in Section 2.06(e), permit, and cause each of its Subsidiaries to permit, the agents and representatives of any Agent at any time and from time to time during normal business hours, at the expense of the Borrower, to examine and make copies of and abstracts from its records and books of account, to visit and inspect its properties, to verify materials, leases, notes, accounts receivable, deposit accounts and its other assets, to conduct audits, physical counts, valuations, appraisals, Phase I Environmental Site Assessments (and, if recommended in the Phase I ESA and, if reasonably requested by the Collateral Agent based upon the results of such Phase I ESA and after consultation with the Parent, an ASTM 1527-00 Phase II Environmental Site Assessment) or examinations and to discuss its affairs, finances and accounts with any of its directors, officers, managerial employees, independent public accountants and auditors, so long as (unless an Event of Default has occurred and is continuing) the Borrower has been given a reasonable opportunity to have a representative present at any such meeting (and if the Borrower so elects to have a representative present at such meeting, then such meeting shall be held at a time and location that is reasonably acceptable to both the Borrower and the Agents), and such meeting shall be upon reasonable prior notice and during normal business hours. In furtherance of the foregoing, each Loan Party hereby authorizes its independent accountants, and the independent

accountants of each of its Subsidiaries, to discuss the affairs, finances and accounts of such Person (independently or together with representatives of such Person) with the agents and representatives authorized by any Agent in accordance with this Section 7.01(f); so long as (unless an Event of Default has occurred and is continuing) the Borrower has been given a reasonable opportunity to have a representative present at any such meeting (and if the Borrower so elects to have a representative present at such meeting, and such meeting shall be held at a time and location that is reasonably acceptable to both the Borrower and the Agents).

(g) Maintenance of Properties, Etc. Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its material properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear and casualty and condemnation excepted, and comply, and cause each of its Subsidiaries to comply, at all times with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder, except to the extent the failure to so maintain and preserve or so comply could not reasonably be expected to have a Material Adverse Effect.

(h) Maintenance of Insurance. Maintain, and cause each of its Subsidiaries to maintain, insurance with reputable insurance companies or associations (including, without limitation, commercial general liability, property, worker's compensation and business interruption insurance) with respect to its properties (including all real properties leased or owned by it) and business, in such amounts, subject to such deductibles and self-insurance retentions and covering such risks as is required by any Governmental Authority having jurisdiction with respect thereto or as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated. The Collateral Agent agrees that the insurance maintained by the Parent and its Subsidiaries as of the Effective Date is satisfactory. Each policy of comprehensive general liability and general property insurance shall, if applicable, (i) name the Collateral Agent, on behalf of the Agents and the Lenders as an additional insured thereunder as its interests may appear, and (ii) in the case of each property insurance policy, contain a loss payable clause or endorsement that names the Collateral Agent, on behalf of the Agents and the Lenders as the loss payee thereunder and use commercially reasonable efforts to cause such endorsements to provide that the insurer will provide at least 30 days' (or in the case of non-payment, 10 days) prior written notice to the Collateral Agent of the exercise of any right of cancellation. All certificates of insurance are to be delivered to the Collateral Agent and the policies are to be premium prepaid, with the loss payable and additional insured endorsement in favor of the Collateral Agent and such other Persons as the Collateral Agent may designate from time to time. If any Loan Party or any of its Subsidiaries fails to maintain such insurance, the Collateral Agent may arrange for such insurance, but at the Borrower's expense and without any responsibility on the Collateral Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent shall have the sole right, in the name of the Lenders, any Loan Party and its Subsidiaries, to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

(i) Obtaining of Permits, Etc. Obtain, maintain and preserve, and cause each of its Subsidiaries to obtain, maintain and preserve, and take all necessary action to timely renew, all permits, licenses, authorizations, approvals, entitlements and accreditations that are necessary or useful in the proper conduct of its business, in each case, except to the extent the failure to obtain, maintain, preserve or take such action could not reasonably be expected to have a Material Adverse Effect.

(j) Environmental. (i) Keep all Collateral and owned Facilities free of any Environmental Liens; (ii) comply, and cause each of its Subsidiaries to comply, with all Environmental Laws in all material respects and provide to the Collateral Agent any non-privileged documentation of such compliance which the Collateral Agent may reasonably request; (iii) provide the Agents written notice within 5 Business Days thereof of any Release of a Hazardous Material in excess of any reportable quantity from or onto any Facility, or from or onto property now or hereafter owned or operated by it or any of its Subsidiaries for which any Loan Party or its Subsidiaries could reasonably be expected to be liable under Environmental Law and take any Remedial Actions required to abate said Release; and (iv) provide the Agents with written notice within 10 days of the receipt of any of the following: (A) notice that an Environmental Lien has been filed against any property of any Loan Party or any of its Subsidiaries; (B) commencement of any Environmental Action or notice that an Environmental Action will be filed against any Loan Party or any of its Subsidiaries; and (C) notice of a violation, citation or other administrative order issued pursuant to Environmental Law, in each case, which could reasonably be expected to have a Material Adverse Effect.

(k) Fiscal Year. Cause the Fiscal Year of the Parent and its Subsidiaries to end on December 31 of each calendar year unless the Agents consent to a change in such Fiscal Year (and appropriate related changes to this Agreement).

(l) Landlord Waivers; Collateral Access Agreements. At any time any Collateral with a book value in excess of \$300,000 (when aggregated with all other Collateral at the same location) is located on any real property of a Loan Party (whether such real property is now existing or acquired after the Effective Date) which is not owned by a Loan Party, or is stored on the premises of a bailee, warehouseman, or similar party, use commercially reasonable efforts to obtain written subordinations or waivers or collateral access agreements, as the case may be, in form and substance reasonably satisfactory to the Collateral Agent.

(m) After Acquired Real Property. Upon the acquisition by any Loan Party after the date hereof of any fee simple interest in any real property (wherever located) (each such interest being a "New Facility") with a Current Value (as defined below) in excess of \$1,000,000, promptly, and in any event within 10 days of such acquisition, notify the Collateral Agent, setting forth with specificity a description of the interest acquired, the location of the real property, any structures or improvements thereon and either an appraisal or such Loan Party's good-faith estimate of the current value of such real property (for purposes of this Section, the "Current Value"). The Collateral Agent shall notify such Loan Party whether it intends to require a Mortgage (and any other Real Property Deliverables) with respect to such New Facility, except that Collateral Agent shall not require a Mortgage or any other Real Property Deliverables for any Facility as to which the Collateral

Agent shall determine in its reasonable discretion, after consultation with the Borrower, that the costs and burdens of obtaining a security interest are excessive in relation to the value afforded thereby. Upon receipt of such notice requesting a Mortgage (and any other Real Property Deliverables), the Person that has acquired such New Facility shall furnish the same to the Collateral Agent within 60 days (or such longer period as the Collateral Agent may agree to in its sole discretion) after receipt of such request. The Borrower shall pay all fees and expenses, including, without limitation, reasonable attorneys' fees and expenses, and all title insurance charges and premiums, in connection with each Loan Party's obligations under this Section 7.01(m).

(n) Anti-Bribery and Anti-Corruption Laws. Maintain, and cause each of its Subsidiaries to maintain, anti-bribery and anti-corruption policies and procedures that are reasonably designed to ensure compliance with the Anti-Corruption Laws.

(o) Lender Meetings. Upon the reasonable request of any Agent or the Required Lenders (which request, so long as no Event of Default shall have occurred and be continuing, shall not be made more than once during each Fiscal Year), participate in a conference call or, if requested by any Agent or the Required Lenders, an in-person meeting with the Agents and the Lenders at such location as may be mutually agreed to by the Borrower and such Agent or the Required Lenders at such time as may be agreed to by the Borrower and such Agent or the Required Lenders.

(p) Further Assurances. Take such action and execute, acknowledge and deliver, and cause each of its Subsidiaries to take such action and execute, acknowledge and deliver, at its sole cost and expense, such agreements, instruments or other documents as any Agent may reasonably require from time to time in order (i) to carry out more effectively the purposes of this Agreement and the other Loan Documents, (ii) to subject to valid and perfected first priority Liens any of the Collateral of any Loan Party (to the extent required by this Agreement and the other Loan Documents), (iii) to establish and maintain the validity and effectiveness of any of the Loan Documents and the validity, perfection and priority of the Liens intended to be created thereby and (iv) to better assure, convey, grant, assign, transfer and confirm unto each Secured Party the rights now or hereafter intended to be granted to it under this Agreement or any other Loan Document. In furtherance of the foregoing, to the maximum extent permitted by applicable law, each Loan Party (i) authorizes each Agent, at any time during the continuance of an Event of Default, to execute any such agreements, instruments or other documents in such Loan Party's name and to file such agreements, instruments or other documents in any appropriate filing office, (ii) authorizes each Agent to file any financing statement required hereunder or under any other Loan Document, and any continuation statement or amendment with respect thereto, in any appropriate filing office without the signature of such Loan Party, and (iii) ratifies the filing of any financing statement, and any continuation statement or amendment with respect thereto, filed without the signature of such Loan Party prior to the date hereof. Notwithstanding the foregoing, in no event will any Loan Party or any of its Subsidiaries be required to take any action in contravention of any other term or agreement in this Agreement or any other Loan Document.

(q) Stock Repurchase Account. Take such action as may be necessary to, within 60 days of the Effective Date, close the Stock Repurchase Account.

Section 7.02 Negative Covenants. Until the Termination Date, each Loan Party shall not, unless the Required Lenders shall otherwise consent in writing:

(a) Liens, Etc. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Lien upon or with respect to any of its properties, whether now owned or hereafter acquired; file or suffer to exist under the Uniform Commercial Code or any Requirement of Law of any jurisdiction, a financing statement (or the equivalent thereof) that names it or any of its Subsidiaries as debtor (other than an unauthorized financing statement (or the equivalent thereof) that names it or any of its Subsidiaries as debtor so long as such unauthorized financing statement is promptly terminated after the Loan Parties obtain knowledge thereof); sign or suffer to exist any security agreement authorizing any secured party thereunder to file such financing statement (or the equivalent thereof) other than, as to all of the above, Permitted Liens.

(b) Indebtedness. Create, incur, assume, guarantee or suffer to exist, or otherwise become or remain liable with respect to, or permit any of its Subsidiaries to create, incur, assume, guarantee or suffer to exist or otherwise become or remain liable with respect to, any Indebtedness other than Permitted Indebtedness.

(c) Fundamental Changes; Dispositions.

(i) Wind-up, liquidate or dissolve, or merge, consolidate or amalgamate with any Person, or permit any of its Subsidiaries to do (or agree (except in a Permitted Agreement) to do) any of the foregoing; provided, however, that

(A) any Wholly Owned Subsidiary of any Loan Party may be merged into any Loan Party or another Wholly Owned Subsidiary of a Loan Party, or may consolidate or amalgamate with any Loan Party or another Wholly Owned Subsidiary of a Loan Party, so long as (1) if a Loan Party is a party to such transaction, then a Loan Party shall be the surviving or continuing entity, (2) such Loan Party gives the Agents at least 15 days (or such shorter period as the Collateral Agent may agree to) prior written notice of such merger, consolidation or amalgamation accompanied by true, correct and complete copies of all material agreements, documents and instruments relating to such merger, consolidation or amalgamation, including, but not limited to, the certificate or certificates of merger or amalgamation to be filed with each appropriate Secretary of State (with a copy as filed promptly after such filing), (3) no Default or Event of Default shall have occurred and be continuing either before or after giving effect to such transaction, and (4) the Lenders' rights in any Collateral, including, without limitation, the existence, perfection and priority of any Lien thereon, are not adversely affected by such merger, consolidation or amalgamation;

(B) any Subsidiary of the Borrower that is not a Loan Party may dissolve or liquidate; provided that if in connection with any such dissolution or liquidation, the dissolving entity transfers its assets to another Person and the transferor in such a transaction is a Loan Party, then to the extent constituting an Investment, such Investment must be a Permitted Investment;

(C) any Subsidiary of the Borrower that is not a Loan Party may merge, amalgamate or consolidate with or dissolve or liquidate into any other Person in order to effect a Permitted Investment;

(D) except in the case of a Loan Party, a merger, dissolution, liquidation or consolidation, the purpose of which is to effect a Permitted Disposition may be effected;

(E) any Loan Party (other than the Borrower) may merge, amalgamate or consolidate with or liquidate or dissolve into any other Person so long as a Loan Party is the surviving Person;

(F) any Subsidiary of the Borrower that is not a Loan Party may merge, amalgamate or consolidate with or liquidate or dissolve into any other Subsidiary of the Borrower that is not a Loan Party; and

(ii) Make any Disposition, whether in one transaction or a series of related transactions, of all or any part of its business, property or assets, whether now owned or hereafter acquired (or agree (except in a Permitted Agreement) to do any of the foregoing), or permit any of its Subsidiaries to do any of the foregoing; provided, however, that any Loan Party and its Subsidiaries may make Permitted Dispositions.

(d) Change in Nature of Business.

(i) Make, or permit any of its Subsidiaries to make, any change in the nature of its business as described in Section 6.01(l).

(ii) Permit Avid Worldwide, Avid GP BV or Avid CV to have any material liabilities (other than liabilities arising under the Loan Documents and the Specified Intercompany Loans and, in the case of Avid Worldwide, the liabilities of its Korean Branch), own any material assets (other than the Equity Interests and rights under the Specified Intercompany Loans held by such Persons on the Effective Date and, in the case of Avid Worldwide, the assets of its Korean Branch) or engage in any operations or business (other than the ownership of the Subsidiaries and rights under the Specified Intercompany Loans owned by such Persons on the Effective Date and, in the case of Avid Worldwide, the operations and business of its Korean Branch).

(e) Loans, Advances, Investments, Etc. Make (or commit or agree to make (except in a Permitted Agreement)), or permit any of its Subsidiaries make (or commit or agree to make (except in a Permitted Agreement)), any Investment in any other Person except for Permitted Investments.

(f) Sale and Leaseback Transactions. Enter into, or permit any of its Subsidiaries to enter into, any Sale and Leaseback Transaction.

(g) Capital Expenditures. Make (or commit or agree to make (except in a Permitted Agreement)), or permit any of its Subsidiaries to make (or commit or agree to make (except in a Permitted Agreement)), any Capital Expenditure (by purchase or Capitalized Lease) that would cause the aggregate amount of all Capital Expenditures made by the Loan Parties and their Subsidiaries in any Fiscal Year to exceed \$20,000,000.

(h) Restricted Payments. Make or permit any of its Subsidiaries to make any Restricted Payment other than Permitted Restricted Payments.

(i) Federal Reserve Regulations. Permit any Loan or the proceeds of any Loan under this Agreement to be used for any purpose that would cause such Loan to be a margin loan under the provisions of Regulation T, U or X of the Board.

(j) Transactions with Affiliates. Enter into, renew, extend or be a party to, or permit any of its Subsidiaries to enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate, except (i) transactions consummated in the ordinary course of business in a manner and to an extent necessary or desirable for the prudent operation of its business, for fair consideration and on terms no less favorable to it or its Subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an Affiliate thereof, and that are fully disclosed to the Agents prior to the consummation thereof, if they involve one or more payments by the Parent or any of its Subsidiaries in excess of \$500,000 for any single transaction or series of related transactions, (ii) transactions with another Loan Party, (iii) transactions permitted by Section 7.02(c), Section 7.02(e), Section 7.02(h) and Section 7.02(m), (iv) transactions between or among Subsidiaries of the Borrower which are not Loan Parties, (v) sales of Qualified Equity Interests of the Parent to Affiliates of the Parent not otherwise prohibited by the Loan Documents and the granting of customary rights in connection therewith, (vi) reasonable and customary director, officer and employee compensation (including bonuses and stock option programs), benefits and indemnification arrangements, in each case approved by the Board of Directors (or a committee thereof) of such Loan Party or such Subsidiary to the extent required by applicable law, (vii) payment by the Borrower to its Subsidiaries of the respective amounts invoiced to the Borrower by its Subsidiaries under any Specified Intercompany Agreement or in respect of the rendition of services pursuant to contractual obligations with the Borrower substantially similar to those set forth in the Specified Intercompany Agreements, and (viii) transactions between or among the Loan Parties and other Subsidiaries of the Borrower that are not Loan Parties upon fair and reasonable terms no less favorable to the Loan Parties thereto than would be obtained in a comparable arm's-length transaction with a Person that is not a Subsidiary of the Borrower.

(k) Limitations on Dividends and Other Payment Restrictions Affecting Subsidiaries. Create or otherwise cause, incur, assume, suffer or permit to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of any Loan Party (i) to pay dividends or to make any other distribution on any shares of Equity Interests of such Subsidiary owned by any Loan Party or any of its Subsidiaries, (ii) to pay or prepay or to subordinate any Indebtedness owed to any Loan Party or any of its Subsidiaries, (iii) to make loans or advances to any Loan Party or any of its Subsidiaries or (iv) to transfer any of its property or assets to any Loan

Party or any of its Subsidiaries, or permit any of its Subsidiaries to do any of the foregoing; provided, however, that nothing in any of clauses (i) through (iv) of this Section 7.02(k) shall prohibit or restrict compliance with:

(A) this Agreement and the other Loan Documents;

(B) any agreement in effect on the date of this Agreement and described on Schedule 7.02(k), or any extension, replacement or continuation of any such agreement; provided, that, any such encumbrance or restriction contained in such extended, replaced or continued agreement is no less favorable to the Agents and the Lenders than the encumbrance or restriction under or pursuant to the agreement so extended, replaced or continued;

(C) any applicable law, rule or regulation (including, without limitation, applicable currency control laws and applicable state corporate statutes restricting the payment of dividends in certain circumstances);

(D) in the case of clause (iv), (1) customary restrictions on the subletting, assignment or transfer of any specified property or asset set forth in a lease, license, asset sale agreement or similar contract for the conveyance of such property or asset and (2) instrument or other document evidencing a Permitted Lien (or the Indebtedness secured thereby) from restricting on customary terms the transfer of any property or assets subject thereto;

(E) Permitted Liens or customary restrictions on dispositions of real property interests in reciprocal easement agreements;

(F) customary restrictions in agreements for the sale of assets during an interim period prior to the closing of the sale of such assets;

(G) customary restrictions in contracts that prohibit the assignment of such contract;

(H) customary restrictions on (i) the Equity Interests of a joint venture and (ii) operation of a joint venture, in each case, set forth in an agreement;

(I) governing a joint venture to which such Loan Party or any of its Subsidiaries is a party; or

(J) the Convertible Note Indenture, the Convertible Notes, the Capped Call Hedge Agreements, any Permitted Purchase Money Indebtedness and any Permitted Refinancing Indebtedness with respect thereto (and any documents evidencing or governing the same).

(l) Limitations on Negative Pledges. Enter into, incur or permit to exist, or permit any Subsidiary to enter into, incur or permit to exist, directly or indirectly, any agreement, instrument, deed, lease or other arrangement that prohibits, restricts or imposes any condition upon

the ability of any Loan Party or any Subsidiary of any Loan Party to create, incur or permit to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, or that requires the grant of any security for an obligation if security is granted for another obligation, except the following: (i) this Agreement and the other Loan Documents, (ii) restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by Section 7.02(b) of this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (iii) any customary restrictions and conditions contained in agreements relating to the sale or other disposition of assets or of a Subsidiary pending such sale or other disposition; provided that such restrictions and conditions apply only to the assets or Subsidiary to be sold or disposed of and such sale or disposition is permitted hereunder, (iv) customary restrictions in leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the assets subject thereto, (v) customary provisions regarding confidentiality or restricting assignment, pledges or transfer of any agreement entered into in the ordinary course of business, (vi) restrictions imposed by the Convertible Note Indenture, the Convertible Notes or the Capped Call Hedge Agreements, and any Permitted Refinancing Indebtedness thereof, (vii) customary restrictions with respect to (A) the Equity Interests of a joint venture and (B) the operation of a joint venture, in each case of this clause (vii), set forth in an agreement governing a joint venture to which such Loan Party or any of its Subsidiaries is a party.

(m) Modifications of Indebtedness, Organizational Documents and Certain Other Agreements; Etc.

(i) Amend, modify or otherwise change (or permit the amendment, modification or other change in any manner of) any of the provisions of any of its or its Subsidiaries' Indebtedness in excess of \$1,000,000 or of any instrument or agreement (including, without limitation, any purchase agreement, indenture, loan agreement or security agreement) evidencing or governing any such Indebtedness if such amendment, modification or change would shorten the final maturity or average life to maturity of, or require any payment to be made earlier than the date originally scheduled on, such Indebtedness, would increase the interest rate applicable to such Indebtedness, would add any covenant or event of default, would change the subordination provisions, if any, of such Indebtedness, or would otherwise be adverse in any material respect to the Lenders or the issuer of such Indebtedness in any respect; provided, that notwithstanding the foregoing, any Permitted Refinancing Indebtedness in respect of such Indebtedness shall be permitted;

(ii) (A) make any voluntary or optional payment (including, without limitation, any payment of interest in cash that, at the option of the issuer, may be paid in cash or in kind), prepayment, redemption, defeasance, sinking fund payment or other acquisition for value of any of its or its Subsidiaries' Indebtedness (including, without limitation, by way of depositing money or securities with the trustee therefor before the date required for the purpose of paying any portion of such Indebtedness when due), (B) refund, refinance, replace or exchange any other Indebtedness for any such Indebtedness (other than with respect to Permitted Refinancing Indebtedness), (C) make any payment, prepayment, redemption, defeasance, sinking fund payment or repurchase of any Subordinated Indebtedness in violation of the subordination provisions thereof or any subordination agreement with respect thereto, or (D) make any payment, prepayment, redemption, defeasance, sinking fund payment or repurchase of any Indebtedness as a result of any

asset sale, change of control, issuance and sale of debt or equity securities or similar event, or give any notice with respect to any of the foregoing; provided, that this clause (ii) shall not apply to (1) the Obligations (and the Convertible Notes to the extent permitted under clause (iii) of this Section 7.02(m)), (2) Permitted Intercompany Investments, (3) Permitted Purchase Money Indebtedness and (4) Permitted Indebtedness under clause (j) of the definition of Permitted Indebtedness;

(iii) make any payment, prepayment, redemption, defeasance, sinking fund payment or repurchase of any Indebtedness in respect of the Convertible Notes or refund, refinance, replace or exchange any Indebtedness in respect of the Convertible Notes; provided that the Parent may (A) refund, refinance, replace or exchange any Indebtedness in respect of the Convertible Notes with Permitted Refinancing Indebtedness, (B) repay the Convertible Notes by making payment in Qualified Equity Interests of the Parent upon the conversion thereof, (C) on the maturity or conversion thereof, repay the Convertible Notes in cash in an amount not to exceed the principal amount of Convertible Notes that remain outstanding after the repayment of all or a portion of such Convertible Notes with Qualified Equity Interests to the maximum extent permissible under the Convertible Note Indenture in accordance with the election of the holders of the Convertible Notes pursuant to the Convertible Note Indenture; and (D) pay, when due, interest and reimbursable indemnities and expenses payable in respect of the Convertible Notes;

(iv) amend, modify or otherwise change any of its Governing Documents (including, without limitation, by the filing or modification of any certificate of designation, or any agreement or arrangement entered into by it) with respect to any of its Equity Interests (including any shareholders' agreement), or enter into any new agreement with respect to any of its Equity Interests, except any such amendments, modifications or changes or any such new agreements or arrangements pursuant to this clause (iv) that either individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect; or

(v) agree to any amendment, modification or other change to or waiver of any of its rights under any Material Contract, the Convertible Notes, the Convertible Note Indenture or the Capped Call Hedge Agreement if such amendment, modification, change or waiver would, at the time of such amendment, modification or other change, be (A) adverse in any material respect to the Secured Parties or (B) reasonably expected to have a Material Adverse Effect.

(n) Investment Company Act of 1940. Engage in any business, enter into any transaction, use any securities or take any other action or permit any of its Subsidiaries to do any of the foregoing, that would cause it or any of its Subsidiaries to become subject to the registration requirements of the Investment Company Act of 1940, as amended, by virtue of being an "investment company" or a company "controlled" by an "investment company" not entitled to an exemption within the meaning of such Act.

(o) ERISA. (i) Engage, or permit any ERISA Affiliate to engage, in any transaction described in Section 4069 of ERISA; (ii) engage, or permit any ERISA Affiliate to engage, with respect to an Employee Plan, in any prohibited transaction described in Section 406 of ERISA or 4975 of the Internal Revenue Code for which a statutory or class exemption is not available or a private exemption has not previously been obtained from the U.S. Department of Labor, except to

the extent that the penalty for all such prohibited transactions does not exceed \$500,000; (iii) adopt or permit any ERISA Affiliate to adopt any employee welfare benefit plan within the meaning of Section 3(1) of ERISA which provides benefits to employees after termination of employment or, if later, an employee's severance period, other than as required by Section 601 of ERISA or applicable law; (iv) fail to make any contribution or payment to any Multiemployer Plan in excess of \$500,000 in the aggregate for all such contributions or payments which it or any ERISA Affiliate may be required to make under any agreement relating to such Multiemployer Plan, or any law pertaining thereto; or (v) fail, or permit any ERISA Affiliate to fail, to pay any required installment or any other payment in excess of \$500,000 for all such installments or other payments required for an Employee Plan under Section 412 of the Internal Revenue Code on or before the due date for such installment or other payment.

(p) Environmental. Permit the use, handling, generation, storage, treatment, Release or disposal of Hazardous Materials at any property owned or leased by it or any of its Subsidiaries, except to the extent such actions could not reasonably be expected to have a Material Adverse Effect.

(q) Accounting Methods. Modify or change, or permit any of its Subsidiaries to modify or change, its method of accounting or accounting principles from those utilized in the preparation of the Financial Statements (other than as may be required to conform to GAAP).

(r) Anti-Money Laundering and Anti-Terrorism Laws.

(i) None of the Loan Parties, nor any of their Subsidiaries (nor to the knowledge of any Loan Party, their Affiliates or agents), shall, except to the extent authorized under the Anti-Money Laundering and Anti-Terrorism Laws, knowingly:

(A) conduct any business or engage in any transaction or dealing with or for the benefit of any Blocked Person, including the making or receiving of any contribution of funds, goods or services to, from or for the benefit of any Blocked Person;

(B) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked or subject to blocking pursuant to the OFAC Sanctions Programs;

(C) use any of the proceeds of the transactions contemplated by this Agreement to finance, promote or otherwise support in any manner any violation of the Anti-Money Laundering and Anti-Terrorism Laws or any specified unlawful activity as that term is defined in the Money Laundering Control Act of 1986, 18 U.S.C. §§ 1956 and 1957; or

(D) violate, attempt to violate, or engage in any transaction that evades or avoids any of the Anti-Money Laundering and Anti-Terrorism Laws.

(ii) None of the Loan Parties, nor any Subsidiary of any of the Loan Parties, nor, to the knowledge of any Loan Party, any Authorized Officer, director or Affiliate of any of the Loan Parties, shall be or shall become a Blocked Person.

(s) Anti-Bribery and Anti-Corruption Laws. None of the Loan Parties shall use, and the Loan Parties shall procure that their Subsidiaries shall not use, the proceeds of any Loan in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws.

Section 7.03 Financial Covenants; Leverage Ratio. Until the Termination Date, each Loan Party shall not, unless the Required Lenders shall otherwise consent in writing, permit the Leverage Ratio of the Parent and its Subsidiaries for any period of 4 consecutive fiscal quarters of the Parent and its Subsidiaries for which the last quarter ends on a date set forth below to be greater than the ratio set forth opposite such date:

<u>Fiscal Quarter End</u>	<u>Leverage Ratio</u>
June 30, 2016	4.35:1.00
September 30, 2016	5.40:1.00
December 31, 2016	4.20:1.00
March 31, 2017	3.50:1.00
June 30, 2017	3.50:1.00
September 30, 2017	3.50:1.00
December 31, 2017	3.30:1.00
March 31, 2018	3.00:1.00
June 30, 2018	3.00:1.00
September 30, 2018	3.00:1.00
December 31, 2018	3.00:1.00
March 31, 2019 and the last day of each fiscal quarter ended thereafter	2.50:1.00

## ARTICLE VIII

### CASH MANAGEMENT ARRANGEMENTS AND OTHER COLLATERAL MATTERS

Section 8.01 Cash Management Arrangements. (a) The Loan Parties shall (i) establish and maintain cash management services of a type and on terms reasonably satisfactory to the Agents at one or more of the banks set forth on Schedule 8.01 (each a "Cash Management Bank") and (ii) except as otherwise provided under Section 8.01(b), deposit or cause to be deposited promptly, and in any event no later than 2 Business Days after the date of receipt thereof, all proceeds in respect of any Collateral, all Collections (of a nature susceptible to a deposit in a bank account) and all other amounts received by any Loan Party (including payments made by Account Debtors directly to any Loan Party) into a Cash Management Account.

(b) On or prior to the Effective Date, the Loan Parties shall, with respect to each Cash Management Account (other than Excluded Accounts), deliver to the Collateral Agent a Control Agreement with respect to such Cash Management Account. The Loan Parties shall not maintain, and shall not permit any of their Subsidiaries to maintain, cash, Cash Equivalents or other amounts in any deposit account or securities account, unless the Collateral Agent shall have received a Control Agreement in respect of each such Cash Management Account (other than Excluded Accounts or other than newly acquired deposit or securities accounts in connection with Permitted Acquisitions (each, an "Acquired Account"), in which case the Loan Parties shall cause such Acquired Account to become subject to a Control Agreement within 30 days following the closing of such Permitted Acquisition (or such longer time as may be agreed to by the Collateral Agent; provided, that if at the end of such 60 days the Loan Parties have (A) fully taken all actions within their control to comply with such requirement and (B) delivered an executed certificate of an Authorized Officer certifying to such effect, such time period shall be automatically extended an additional 30 days).

(c) Upon the terms and subject to the conditions set forth in a Control Agreement with respect to a Cash Management Account, all amounts received in such Cash Management Account shall at the Administrative Agent's direction be wired each Business Day into the Administrative Agent's Account, except that, so long as no Event of Default has occurred and is continuing, the Administrative Agent will not direct the Cash Management Bank to transfer funds in such Cash Management Account to the Administrative Agent's Account.

(d) So long as no Event of Default has occurred and is continuing, the Borrower may amend Schedule 8.01 to add or replace a Cash Management Bank or Cash Management Account; provided, however, that (i) except with respect to an Acquired Account (the institution maintaining an Acquired Account, an "Acquired Cash Management Bank") prior to the time of the opening of such Cash Management Account, each Loan Party and such prospective Cash Management Bank shall have executed and delivered to the Collateral Agent a Control Agreement and (ii) with respect to any Acquired Account and Acquired Cash Management Bank, Schedule 8.01 shall be automatically amended upon the closing of a Permitted Acquisition to reflect such Acquired Account(s) and Acquired Cash Management Bank. Each Loan Party shall close any of its Cash Management Accounts (and establish replacement cash management accounts in accordance with the foregoing sentence) promptly and in any event within 60 days of notice from the Collateral Agent that the creditworthiness of any Cash Management Bank is no longer acceptable in the Collateral Agent's reasonable judgment, or the Collateral Agent's liability under any Control Agreement with such Cash Management Bank is no longer acceptable in the Collateral Agent's reasonable judgment.

## ARTICLE IX

### EVENTS OF DEFAULT

Section 9.01 Events of Default. Each of the following events shall constitute an event of default (each, an "Event of Default"):

(a) the Borrower shall fail to pay, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), (i) any interest on any Loan, any Collateral Agent Advance or any fee, indemnity or other amount payable under this Agreement (other than any portion thereof constituting principal of the Loans) or any other Loan Document, and such failure continues for a period of 3 Business Days or (ii) all or any portion of the principal of the Loans;

(b) any representation or warranty made or deemed made by or on behalf of any Loan Party or by any officer of the foregoing under or in connection with any Loan Document or under or in connection with any certificate or other writing delivered to any Secured Party pursuant to any Loan Document shall have been incorrect in any material respect (or in any respect if such representation or warranty is qualified or modified as to materiality or "Material Adverse Effect" in the text thereof) when made or deemed made;

(c) any Loan Party shall fail to perform or comply with (i) any covenant or agreement contained in Section 7.01(a) and such failure shall remain unremedied for 1 day, (ii) any covenant or agreement contained in Section 7.01(c), Section 7.01(d), Section 7.01(f), Section 7.01(h), Section 7.01(k), Section 7.01(o), Section 7.02 or Section 7.03 or Article VIII, (iii) any affirmative covenant contained in any Security Agreement to which it is a party with respect to the delivery of Collateral to the Collateral Agent or any negative covenant contained in such Security Agreement, or any negative covenant contained in any Mortgage to which it is a party, and, in each case in this clause (iii), if capable of being remedied, such failure shall remain unremedied for 5 days or (iv) any affirmative covenant (other than any affirmative covenant with respect to the delivery of Collateral to the Collateral Agent) contained in any Security Agreement to which it is a party, or any affirmative covenant contained in any Mortgage to which it is a party and, in each case in this clause (iv), if capable of being remedied, such failure shall remain unremedied for 10 days after the earlier of the date an Authorized Officer of any Loan Party has knowledge of such failure and the date written notice of such default shall have been given by any Agent to such Loan Party;

(d) any Loan Party shall fail to perform or comply with any other term, covenant or agreement contained in any Loan Document to be performed or observed by it and, except as set forth in subsections (a), (b) and (c) of this Section 9.01, such failure, if capable of being remedied, shall remain unremedied for 20 days after the earlier of the date a Senior Officer of any Loan Party has knowledge of such failure and the date written notice of such default shall have been given by any Agent to such Loan Party;

(e) the Parent or any of its Significant Subsidiaries shall fail to pay when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) any

principal, interest or other amount payable in respect of Indebtedness (excluding Indebtedness evidenced by this Agreement) having an aggregate principal amount outstanding in excess of \$5,000,000, and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness, or any other default under any agreement or instrument relating to any such Indebtedness, or any other event, shall occur and shall continue after the applicable grace or cure period, if any, specified in such agreement or instrument, if the effect of such default or event is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness; or any such Indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), redeemed, purchased or defeased or an offer to prepay, redeem, purchase or defease such Indebtedness shall be required to be made, in each case, prior to the stated maturity thereof;

(f) the Parent or any of its Significant Subsidiaries (i) shall institute any proceeding or voluntary case seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for any such Person or for any substantial part of its property, (ii) shall be generally not paying its debts as such debts become due or shall admit in writing its inability to pay its debts generally, (iii) shall make a general assignment for the benefit of creditors, or (iv) the Board of Directors of such Person shall take any action to authorize or effect any of the actions set forth above in this subsection (f);

(g) any proceeding shall be instituted against the Parent or any of its Significant Subsidiaries seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for any such Person or for any substantial part of its property, and either such proceeding shall remain undismissed or unstayed for a period of 30 days or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against any such Person or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property) shall occur;

(h) any material provision of any Loan Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against any Loan Party intended to be a party thereto, or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by any Loan Party or any Governmental Authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or any Loan Party shall deny in writing that it has any liability or obligation purported to be created under any Loan Document;

(i) the Collateral Agent shall not have or shall cease to have a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien (subject to Permitted Liens) in favor of the Collateral Agent for the benefit of the Agents and the Lenders on any portion of the Collateral having a fair market value in excess of \$1,000,000, except as the result

of an action or failure to act on the part of any Agent when provided with the information required by the Loan Documents;

(j) one or more judgments, orders or awards (or any settlement of any litigation or other proceeding that, if breached, could result in a judgment, order or award) for the payment of money exceeding \$5,000,000 in the aggregate (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has been notified and has not denied coverage) shall be rendered against the Parent or any of its Significant Subsidiaries and remain unsatisfied and (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order, award or settlement or (ii) there shall be a period of 10 consecutive days after entry thereof during which (A) a stay of enforcement thereof is not in effect or (B) the same is not vacated, discharged, stayed or bonded pending appeal;

(k) the Parent or any of its Significant Subsidiaries is enjoined, restrained or in any way prevented by the order of any court or any Governmental Authority from conducting, or otherwise ceases to conduct for any reason whatsoever, all or any material part of its business for more than 15 days;

(l) any material damage to, or loss, theft or destruction of, any Collateral, whether or not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than 15 consecutive days, the cessation or substantial curtailment of revenue producing activities at any facility of any Loan Party, if any such event or circumstance could reasonably be expected to have a Material Adverse Effect;

(m) the loss, suspension or revocation of, or failure to renew, any license or permit now held or hereafter acquired by the Parent or any of its Significant Subsidiaries, if such loss, suspension, revocation or failure to renew could reasonably be expected to have a Material Adverse Effect;

(n) the indictment of the Parent or any of its Significant Subsidiaries or any Senior Officer thereof under any criminal statute, or commencement of criminal or civil proceedings against the Parent or any of its Significant Subsidiaries or any Senior Officer thereof, pursuant to which statute or proceedings the penalties or remedies sought include forfeiture to any Governmental Authority of any material portion of the property of any Loan Party or Significant Subsidiary;

(o) any Loan Party or any of its ERISA Affiliates shall have made a complete or partial withdrawal from a Multiemployer Plan, and, as a result of such complete or partial withdrawal, any Loan Party or any of its ERISA Affiliates incurs a withdrawal liability in an annual amount exceeding \$5,000,000; or a Multiemployer Plan enters reorganization status under Section 4241 of ERISA, and, as a result thereof any Loan Party's or any of its ERISA Affiliates' annual contribution requirements with respect to such Multiemployer Plan increases in an annual amount exceeding \$5,000,000;

(p) any Termination Event with respect to any Employee Plan shall have occurred, and, 30 days after notice thereof shall have been given to any Loan Party by any Agent, (i) such Termination Event (if correctable) shall not have been corrected, and (ii) the then current value of such Employee Plan's vested benefits exceeds the then current value of assets allocable to such benefits in such Employee Plan by more than \$5,000,000 (or, in the case of a Termination Event involving liability under Section 409, 502(i), 502(l), 515, 4062, 4063, 4064, 4069, 4201, 4204 or 4212 of ERISA or Section 4971 or 4975 of the Internal Revenue Code, the liability is in excess of such amount);

(q) (i) any of the Obligations in principal amount in excess of \$2,500,000 for any reason shall cease to be "Senior Indebtedness" or "Designated Senior Indebtedness" (or any comparable terms) under, and as defined in the documents evidencing or governing any Subordinated Indebtedness, (ii) any holder of Subordinated Indebtedness in the principal amount of \$2,500,000 shall fail to perform or comply with any of the subordination provisions of the documents evidencing or governing such Subordinated Indebtedness, or (iii) the subordination provisions of the documents evidencing or governing any Subordinated Indebtedness in principal amount in excess of \$2,500,000 shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Subordinated Indebtedness; or

(r) a Change of Control shall have occurred;

then, and in any such event, the Collateral Agent may, and shall at the request of the Required Lenders, by notice to the Borrower, (i) terminate or reduce all Commitments, whereupon all Commitments shall immediately be so terminated or reduced, (ii) declare all or any portion of the Loans then outstanding to be accelerated and due and payable, whereupon all or such portion of the aggregate principal of all Loans, all accrued and unpaid interest thereon, all fees and all other amounts payable under this Agreement and the other Loan Documents shall become due and payable immediately, together with the payment of the Applicable Premium with respect to the Commitments so terminated and the Loans so repaid, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by each Loan Party and (iii) exercise any and all of its other rights and remedies under applicable law, hereunder and under the other Loan Documents; provided, however, that upon the occurrence of any Event of Default described in subsection (f) or (g) of this Section 9.01 with respect to any Loan Party, without any notice to any Loan Party or any other Person or any act by any Agent or any Lender, all Commitments shall automatically terminate and all Loans then outstanding, together with all accrued and unpaid interest thereon, all fees and all other amounts due under this Agreement and the other Loan Documents, including, without limitation, the Applicable Premium, shall be accelerated and become due and payable automatically and immediately, without presentment, demand, protest or notice of any kind, all of which are expressly waived by each Loan Party.

## ARTICLE X

### AGENTS

Section 10.01 Appointment. Each Lender (and each subsequent maker of any Loan by its making thereof) hereby irrevocably appoints, authorizes and empowers the Administrative Agent and the Collateral Agent to perform the duties of each such Agent as set forth in this Agreement and the other Loan Documents, together with such actions and powers as are reasonably incidental thereto, including: (i) to receive on behalf of each Lender any payment of principal of or interest on the Loans outstanding hereunder and all other amounts accrued hereunder for the account of the Lenders and paid to such Agent, and, subject to Section 2.02 of this Agreement, to distribute promptly to each Lender its Pro Rata Share of all payments so received; (ii) to distribute to each Lender copies of all material notices and agreements received by such Agent and not required to be delivered to each Lender pursuant to the terms of this Agreement, provided that the Agents shall not have any liability to the Lenders for any Agent's inadvertent failure to distribute any such notices or agreements to the Lenders; (iii) to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Loans, and related matters and to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Collateral and related matters; (iv) to execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to this Agreement or any other Loan Document; (v) to make the Loans and Collateral Agent Advances, for such Agent or on behalf of the applicable Lenders as provided in this Agreement or any other Loan Document; (vi) to perform, exercise, and enforce any and all other rights and remedies of the Lenders with respect to the Loan Parties, the Obligations, or otherwise related to any of same to the extent reasonably incidental to the exercise by such Agent of the rights and remedies specifically authorized to be exercised by such Agent by the terms of this Agreement or any other Loan Document; (vii) to incur and pay such fees necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to this Agreement or any other Loan Document; (viii) subject to Section 10.03, to take such action as such Agent deems appropriate on its behalf to administer the Loans and the Loan Documents and to exercise such other powers delegated to such Agent by the terms hereof or the other Loan Documents (including, without limitation, the power to give or to refuse to give notices, waivers, consents, approvals and instructions and the power to make or to refuse to make determinations and calculations); and (ix) to act with respect to all Collateral under the Loan Documents, including for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations. As to any matters not expressly provided for by this Agreement and the other Loan Documents (including, without limitation, enforcement or collection of the Loans), the Agents shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), and such instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) shall be binding upon all Lenders and all makers of Loans; provided, however, the Agents shall not be required to take any action which, in the reasonable opinion of any

Agent, exposes such Agent to liability or which is contrary to this Agreement or any other Loan Document or applicable law.

Section 10.02 Nature of Duties; Delegation. (a) The Agents shall have no duties or responsibilities except those expressly set forth in this Agreement or in the other Loan Documents. The duties of the Agents shall be mechanical and administrative in nature. The Agents shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any other Loan Document, express or implied, is intended to or shall be construed to impose upon the Agents any obligations in respect of this Agreement or any other Loan Document except as expressly set forth herein or therein. Each Lender shall make its own independent investigation of the financial condition and affairs of the Loan Parties in connection with the making and the continuance of the Loans hereunder and shall make its own appraisal of the creditworthiness of the Loan Parties and the value of the Collateral, and the Agents shall have no duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into their possession before the initial Loan hereunder or at any time or times thereafter, provided that, upon the reasonable request of a Lender, each Agent shall provide to such Lender any documents or reports delivered to such Agent by the Loan Parties pursuant to the terms of this Agreement or any other Loan Document. If any Agent seeks the consent or approval of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) to the taking or refraining from taking any action hereunder, such Agent shall send notice thereof to each Lender. Each Agent shall promptly notify each Lender any time that the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) have instructed such Agent to act or refrain from acting pursuant hereto.

(b) Each Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Lender). Any such Person shall benefit from this Article X to the extent provided by the applicable Agent.

Section 10.03 Rights, Exculpation, Etc. The Agents and their directors, officers, agents or employees shall not be liable for any action taken or omitted to be taken by them under or in connection with this Agreement or the other Loan Documents, except for their own gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. Without limiting the generality of the foregoing, the Agents (i) may treat the payee of any Loan as the owner thereof until the Collateral Agent receives written notice of the assignment or transfer thereof, pursuant to Section 12.07 hereof, signed by such payee and in form satisfactory to the Collateral Agent; (ii) may consult with legal counsel (including, without limitation, counsel to any Agent or counsel to the Loan Parties), independent public accountants, and other experts selected by any of them and shall not be liable for any action taken or omitted to be taken in good faith by any of them in accordance with the advice of such counsel or experts; (iii) make no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, certificates, warranties or representations made in or in connection with this Agreement or the other Loan Documents; (iv) shall not have any duty to ascertain or to inquire as to the performance or observance

of any of the terms, covenants or conditions of this Agreement or the other Loan Documents on the part of any Person, the existence or possible existence of any Default or Event of Default, or to inspect the Collateral or other property (including, without limitation, the books and records) of any Person; (v) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; and (vi) shall not be deemed to have made any representation or warranty regarding the existence, value or collectibility of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Agents be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral. The Agents shall not be liable for any apportionment or distribution of payments made in good faith pursuant to Section 4.03, and if any such apportionment or distribution is subsequently determined to have been made in error, and the sole recourse of any Lender to whom payment was due but not made shall be to recover from other Lenders any payment in excess of the amount which they are determined to be entitled. The Agents may at any time request instructions from the Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the other Loan Documents the Agents are permitted or required to take or to grant, and if such instructions are promptly requested, the Agents shall be absolutely entitled to refrain from taking any action or to withhold any approval under any of the Loan Documents until they shall have received such instructions from the Required Lenders. Without limiting the foregoing, no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents).

Section 10.04 Reliance. Each Agent shall be entitled to rely upon any written notices, statements, certificates, orders or other documents or any telephone message believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person, and with respect to all matters pertaining to this Agreement or any of the other Loan Documents and its duties hereunder or thereunder, upon advice of counsel selected by it.

Section 10.05 Indemnification. To the extent that any Agent is not reimbursed and indemnified by any Loan Party, and whether or not such Agent has made demand on any Loan Party for the same, the Lenders will, within five days of written demand by such Agent, reimburse such Agent for and indemnify such Agent from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, client charges and expenses of counsel or any other advisor to such Agent), advances or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against such Agent in any way relating to or arising out of this Agreement or any of the other Loan Documents or any action taken or omitted by such Agent under this Agreement or any of the other Loan Documents, in proportion to each Lender's Pro Rata Share, including, without limitation, advances and disbursements made pursuant to Section 10.08; provided, however, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements for which there has been a final non-appealable judicial determination that such liability resulted from such Agent's gross negligence or willful misconduct. The obligations

of the Lenders under this Section 10.05 shall survive the payment in full of the Loans and the termination of this Agreement.

Section 10.06 Agents Individually. With respect to its Pro Rata Share of the Total Commitment hereunder and the Loans made by it, each Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or maker of a Loan. The terms "Lenders" or "Required Lenders" or any similar terms shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity as a Lender or one of the Required Lenders. Each Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with the Borrower as if it were not acting as an Agent pursuant hereto without any duty to account to the other Lenders.

Section 10.07 Successor Agent. (a) Any Agent may at any time give at least 30 days prior written notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right to appoint a successor Agent. If no such successor Agent shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Agent with the consent of the Borrower (such consent not to be unreasonably withheld) so long as no Event of Default has occurred and is continuing. Whether or not a successor Agent has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) With effect from the Resignation Effective Date, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (other than its obligations under Section 12.19 hereof and except that in the case of any Collateral held by such Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (ii) all payments, communications and determinations provided to be made by, to or through such retiring Agent shall instead be made by or to each Lender directly, until such time, if any, as a successor Agent shall have been appointed as provided for above. Upon the acceptance of a successor's Agent's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (other than its obligations under Section 12.19 hereof). After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article, Section 12.04 and Section 12.15 shall continue in effect for the benefit of such retiring Agent in respect of any actions taken or omitted to be taken by it while the retiring Agent was acting as Agent.

Section 10.08 Collateral Matters.

(a) The Collateral Agent may from time to time make such disbursements and advances ("Collateral Agent Advances") which the Collateral Agent, in its reasonable discretion, deems necessary or desirable to preserve, protect, prepare for sale or lease or dispose of the Collateral

or any portion thereof, to enhance the likelihood or maximize the amount of repayment by the Borrower of the Loans and other Obligations or to pay any other amount chargeable to the Borrower pursuant to the terms of this Agreement, including, without limitation, costs, fees and expenses as described in Section 12.04. The Collateral Agent Advances shall be repayable on demand and be secured by the Collateral and shall bear interest at a rate per annum equal to the rate then applicable to Revolving Loans that are Reference Rate Loans. The Collateral Agent Advances shall constitute Obligations hereunder which may be charged to the Loan Account in accordance with Section 4.01. The Collateral Agent shall notify each Lender and the Borrower in writing of each such Collateral Agent Advance, which notice shall include a description of the purpose of such Collateral Agent Advance. Without limitation to its obligations pursuant to Section 10.05, each Lender agrees that it shall make available to the Collateral Agent, upon the Collateral Agent's demand, in Dollars in immediately available funds, the amount equal to such Lender's Pro Rata Share of each such Collateral Agent Advance. If such funds are not made available to the Collateral Agent by such Lender, the Collateral Agent shall be entitled to recover such funds on demand from such Lender, together with interest thereon for each day from the date such payment was due until the date such amount is paid to the Collateral Agent, at the Federal Funds Rate for three Business Days and thereafter at the Reference Rate.

(b) The Lenders hereby irrevocably authorize the Collateral Agent, at its option and in its discretion, to (i) release any Lien granted to or held by the Collateral Agent upon any Collateral upon the Termination Date; (ii) release any Lien granted to or held by the Collateral Agent upon any Collateral constituting property being sold or disposed of in the ordinary course of any Loan Party's business or otherwise in compliance with the terms of this Agreement and the other Loan Documents; (iii) release any Lien granted to or held by the Collateral Agent upon any Collateral constituting property in which the Loan Parties owned no interest at the time the Lien was granted or at any time thereafter; or if approved, authorized or ratified in writing by the Lenders in accordance with Section 12.02; or (iv) subordinate any Lien on any property granted to or held by Administrative Agent or Collateral Agent under any Loan Document to the holder of any Lien on property that is permitted by clause (e) of the definition of "Permitted Lien" and (v) release any Guarantor or any other Loan Party as provided in clause (c) below. Without, in any manner limiting the Collateral Agent's authority to act without any specific or further authorization or consent by the Lenders upon request by the Collateral Agent at any time, the Lenders will confirm in writing the Collateral Agent's authority to effectuate the releases pursuant to this Section 10.08(b).

(c) Upon prior written request by any Loan Party, the Collateral Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release of the Liens granted to the Collateral Agent for the benefit of the Agents and the Lenders upon such Collateral as expressly provided by the terms hereof (including on the Termination Date); provided, however, that (i) the Collateral Agent shall not be required to execute any such document on terms which, in the Collateral Agent's reasonable opinion, would expose the Collateral Agent to liability or create any monetary obligations or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any Lien upon (or obligations of any Loan Party in respect of) all interests in the Collateral retained by any Loan Party.

(d) Anything contained in any of the Loan Documents to the contrary notwithstanding, the Loan Parties, each Agent and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral under any Loan Document or to enforce any Guaranty, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Collateral Agent for the benefit of the Lenders in accordance with the terms thereof, (ii) in the event of a foreclosure by the Collateral Agent on any of the Collateral pursuant to a public or private sale, the Administrative Agent, the Collateral Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and (iii) the Collateral Agent, as agent for and representative of the Agents and the Lenders (but not any other Agent or any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled (either directly or through one or more acquisition vehicles) for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral to be sold (A) at any public or private sale, (B) at any sale conducted by the Collateral Agent under the provisions of the Uniform Commercial Code (including pursuant to Sections 9-610 or 9-620 of the Uniform Commercial Code), (C) at any sale or foreclosure conducted by the Collateral Agent (whether by judicial action or otherwise) in accordance with applicable law or (D) any sale conducted pursuant to the provisions of any Debtor Relief Law (including Section 363 of the Bankruptcy Code), to use and apply all or any of the Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Agent at such sale.

(e) The Collateral Agent shall have no obligation whatsoever to any Lender to assure that the Collateral exists or is owned by the Loan Parties or is cared for, protected or insured or has been encumbered or that the Lien granted to the Collateral Agent pursuant to this Agreement or any other Loan Document has been properly or sufficiently or lawfully created, perfected, protected or enforced or is entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Collateral Agent in this Section 10.08 or in any other Loan Document, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Collateral Agent may act in any manner it may deem appropriate, in its sole discretion, given the Collateral Agent's own interest in the Collateral as one of the Lenders and that the Collateral Agent shall have no duty or liability whatsoever to any other Lender, except as otherwise provided herein.

Section 10.09 Agency for Perfection. Each Agent and each Lender hereby appoints each other Agent and each other Lender as agent and bailee for the purpose of perfecting the security interests in and liens upon the Collateral in assets which, in accordance with Article 9 of the Uniform Commercial Code, can be perfected only by possession or control (or where the security interest of a secured party with possession or control has priority over the security interest of another secured party) and each Agent and each Lender hereby acknowledges that it holds possession of or otherwise controls any such Collateral for the benefit of the Agents and the Lenders as secured party. Should the Administrative Agent or any Lender obtain possession or control of any such Collateral, the Administrative Agent or such Lender shall notify the Collateral Agent thereof, and, promptly upon the Collateral Agent's request therefor shall deliver such Collateral to the Collateral Agent or in accordance with the Collateral Agent's instructions. In addition, the Collateral Agent shall also have the power and authority hereunder to appoint such other sub-agents as may be necessary or required

under applicable state law or otherwise to perform its duties and enforce its rights with respect to the Collateral and under the Loan Documents. Each Loan Party by its execution and delivery of this Agreement hereby consents to the foregoing.

Section 10.10 No Reliance on any Agent's Customer Identification Program. Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on any Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other requirements imposed by the USA PATRIOT Act or the regulations issued thereunder, including the regulations set forth in 31 C.F.R. §§ 1010.100(yy), (iii), 1020.100, and 1020.220 (formerly 31 C.F.R. § 103.121), as hereafter amended or replaced ("CIP Regulations"), or any other Anti-Terrorism Laws, including any programs involving any of the following items relating to or in connection with any of the Loan Parties, their Affiliates or their agents, the Loan Documents or the transactions hereunder or contemplated hereby: (1) any identity verification procedures, (2) any recordkeeping, (3) comparisons with government lists, (4) customer notices or (5) other procedures required under the CIP Regulations or other regulations issued under the USA PATRIOT Act. Each Lender, Affiliate, participant or assignee subject to Section 326 of the USA PATRIOT Act will perform the measures necessary to satisfy its own responsibilities under the CIP Regulations.

Section 10.11 No Third Party Beneficiaries. Other than Sections 10.07 and 10.08, the provisions of this Article are solely for the benefit of the Secured Parties, and no Loan Party shall have rights as a third-party beneficiary of any of such provisions.

Section 10.12 No Fiduciary Relationship. It is understood and agreed that the use of the term "agent" herein or in any other Loan Document (or any other similar term) with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

Section 10.13 Reports; Confidentiality; Disclaimers. By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that each Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report with respect to the Parent or any of its Subsidiaries (each, a "Report") prepared by or at the request of such Agent, and each Agent shall so furnish each Lender with each such Report,

(b) expressly agrees and acknowledges that the Agents (i) do not make any representation or warranty as to the accuracy of any Reports, and (ii) shall not be liable for any information contained in any Reports,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that any Agent or other party performing any audit or examination will inspect only specific information regarding the Parent and its Subsidiaries and will

rely significantly upon the Parent's and its Subsidiaries' books and records, as well as on representations of their personnel,

(d) agrees to keep all Reports and other material, non-public information regarding the Parent and its Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 12.19, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold any Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to the Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of the Borrower, and (ii) to pay and protect, and indemnify, defend and hold any Agent and any other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by any such Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

Section 10.14 Collateral Custodian. Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent or its designee may at any time and from time to time employ and maintain on the premises of any Loan Party a custodian selected by the Collateral Agent or its designee who shall have full authority to do all acts necessary to protect the Agents' and the Lenders' interests. Each Loan Party hereby agrees to, and to cause its Subsidiaries to, cooperate with any such custodian and to do whatever the Collateral Agent or its designee may reasonably request to preserve the Collateral. All costs and expenses incurred by the Collateral Agent or its designee by reason of the employment of the custodian shall be the responsibility of the Borrower and charged to the Loan Account.

Section 10.15 [Reserved].

Section 10.16 [Reserved].

Section 10.17 Collateral Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law, the Collateral Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether any Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans 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 Secured Parties (including any claim for the compensation, expenses, disbursements and advances of the Secured Parties and their respective agents and counsel and all other amounts due the Secured Parties hereunder and under the other Loan Documents) (provided, that in the case of legal expenses,

the Borrower's obligations shall be limited to one counsel to the Collateral Agent, one counsel to the Administrative Agent, one counsel to the other Lenders, and one local counsel in each relevant jurisdiction (unless a conflict arises, in which case the reasonable and documented fees and expenses of each conflicts counsel shall also be reimbursed by the Borrower)) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Secured Party to make such payments to the Collateral Agent and, in the event that the Collateral Agent shall consent to the making of such payments directly to the Secured Parties, 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 hereunder and under the other Loan Documents.

## ARTICLE XI

### GUARANTY

Section 11.01 Guaranty. Each Guarantor hereby jointly and severally and unconditionally and irrevocably guarantees the punctual payment when due, whether at stated maturity, by acceleration or otherwise, of all Obligations of the Borrower now or hereafter existing under any Loan Document, whether for principal, interest (including, without limitation, all interest that accrues after the commencement of any Insolvency Proceeding of the Borrower, whether or not a claim for post-filing interest is allowed in such Insolvency Proceeding), fees, commissions, expense reimbursements, indemnifications or otherwise (such obligations, to the extent not paid by the Borrower, being the "Guaranteed Obligations"), and agrees to pay any and all expenses (including reasonable counsel fees and expenses) incurred by the Secured Parties in enforcing any rights under the guaranty set forth in this Article XI, subject to Section 12.04. Without limiting the generality of the foregoing, each Guarantor's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by the Borrower to the Secured Parties under any Loan Document but for the fact that they are unenforceable or not allowable due to the existence of an Insolvency Proceeding involving the Borrower. In no event shall the obligation of any Guarantor hereunder exceed the maximum amount such Guarantor could guarantee under any Debtor Relief Law.

Section 11.02 Guaranty Absolute. Each Guarantor jointly and severally guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Loan Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Secured Parties with respect thereto. Each Guarantor agrees that this Article XI constitutes a guaranty of payment when due and not of collection and waives any right to require that any resort be made by any Agent or any Lender to any Collateral. The obligations of each Guarantor under this Article XI are independent of the Guaranteed Obligations,

and a separate action or actions may be brought and prosecuted against each Guarantor to enforce such obligations, irrespective of whether any action is brought against any Loan Party or whether any Loan Party is joined in any such action or actions. The liability of each Guarantor under this Article XI shall be, until the Termination Date, irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives any defenses it may now or hereafter have in any way relating to, any or all of the following:

- (a) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto;
- (b) 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 Loan Document, including, without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Loan Party or otherwise;
- (c) any taking, exchange, release or non-perfection of any Collateral, or any taking, release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;
- (d) the existence of any claim, set-off, defense or other right that any Guarantor may have at any time against any Person, including, without limitation, any Secured Party;
- (e) any change, restructuring or termination of the corporate, limited liability company or partnership structure or existence of any Loan Party; or
- (f) any other circumstance (including, without limitation, any statute of limitations) or any existence of or reliance on any representation by the Secured Parties that might otherwise constitute a defense available to, or a discharge of, any Loan Party or any other guarantor or surety.

This Article XI shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by Secured Parties or any other Person upon the insolvency, bankruptcy or reorganization of the Borrower or otherwise, all as though such payment had not been made.

Section 11.03 Waiver. Each Guarantor hereby waives (i) promptness and diligence, (ii) notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and this Article XI and any requirement that the Secured Parties exhaust any right or take any action against any Loan 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 XI from any one particular fund or source or to exhaust any right or take any action against any other Loan Party, any other Person or any Collateral, (iv) any requirement that any Secured Party protect, secure, perfect or insure any security interest or Lien on any property subject thereto or exhaust any right to take any action against any Loan Party, any other Person or any Collateral, and (v) any other defense available to any Guarantor. Each Guarantor agrees that the Secured Parties shall have no obligation to marshal

any assets in favor of any Guarantor or against, or in payment of, any or all of the Obligations. Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated herein and that the waiver set forth in this Section 11.03 is knowingly made in contemplation of such benefits. Each Guarantor hereby waives any right to revoke this Article XI, and acknowledges that this Article XI is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

Section 11.04 Continuing Guaranty; Assignments. This Article XI is a continuing guaranty and shall (a) remain in full force and effect until the later of the cash payment in full of the Guaranteed Obligations (other than Contingent Indemnity Obligations) and all other amounts payable under this Article XI and the Termination Date, (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Secured Parties and their successors, pledgees, transferees and assigns. Without limiting the generality of the foregoing clause (c), any Lender may pledge, assign or otherwise transfer all or any portion of its rights and obligations under this Agreement (including, without limitation, all or any portion of its Commitments and its Loans owing to it) to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted such Lender herein or otherwise, in each case as provided in Section 12.07.

Section 11.05 Subrogation. No Guarantor will exercise any rights that it may now or hereafter acquire against any Loan Party or any other guarantor that arise from the existence, payment, performance or enforcement of such Guarantor's obligations under this Article XI, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Secured Parties against any Loan Party or any other guarantor or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from any Loan Party or any other guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until the Termination Date occurs. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence at any time prior to the Termination Date, such amount shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Article XI, whether matured or unmatured, in accordance with the terms of this Agreement, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Article XI thereafter arising. If (i) any Guarantor shall make payment to the Secured Parties of all or any part of the Guaranteed Obligations, (ii) all of the Guaranteed Obligations and all other amounts payable under this Article XI shall be paid in full in cash and (iii) the Termination Date shall have occurred, the Secured Parties will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment by such Guarantor.

Section 11.06 Contribution. All Guarantors desire to allocate among themselves, in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor under this Guaranty such that its

Aggregate Payments exceeds its Fair Share as of such date, such Guarantor shall be entitled to a contribution from each of the other Guarantors in an amount sufficient to cause each Guarantor's Aggregate Payments to equal its Fair Share as of such date. "Fair Share" means, with respect to any Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Guarantor, to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Guarantors multiplied by, (b) the aggregate amount paid or distributed on or before such date by all Guarantors under this Guaranty in respect of the obligations Guaranteed. "Fair Share Contribution Amount" means, with respect to any Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Guarantor under this Guaranty that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the "Fair Share Contribution Amount" with respect to any Guarantor for purposes of this Section 11.06, any assets or liabilities of such Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Guarantor. "Aggregate Payments" means, with respect to any Guarantor as of any date of determination, an amount equal to (A) the aggregate amount of all payments and distributions made on or before such date by such Guarantor in respect of this Guaranty (including, without limitation, in respect of this Section 11.06), minus (B) the aggregate amount of all payments received on or before such date by such Guarantor from the other Guarantors as contributions under this Section 11.06. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Guarantor. The allocation among Guarantors of their obligations as set forth in this Section 11.06 shall not be construed in any way to limit the liability of any Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 11.06.

## MISCELLANEOUS

### Section 12.01 Notices, Etc.

(ab) Notices Generally. All notices and other communications provided for hereunder shall be in writing and shall be delivered by hand, sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, or telecopier. In the case of notices or other communications to any Loan Party, Administrative Agent or the Collateral Agent, as the case may be, they shall be sent to the respective address set forth below (or, as to each party, at such other address as shall be designated by such party in a written notice to the other parties complying as to delivery with the terms of this Section 12.01):

Avid Technology, Inc.  
65-75 Network Drive  
Burlington, MA 01803  
Attention: General Counsel  
Telephone:

Telecopier:

with a copy to:

Covington & Burling LLP  
One City Center  
850 Tenth Street, NW  
Washington, DC 20001  
Attention: Peter Zern  
Telephone: (202) 662-5679  
Telecopier: (202) 778-5679

if to the Administrative Agent or the Collateral Agent, to it at the following address:

Cerberus Business Finance, LLC  
875 Third Avenue  
New York, New York 10022  
Attention: Kevin Genda  
Telephone: (212) 891-2117  
Telecopier: (212) 891-1541

in each case, with a copy to:

Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, New York 10022  
Attention: Frederic L. Ragucci  
Telephone: 212-756-2000  
Telecopier: 212-593-5955

All notices or other communications sent in accordance with this Section 12.01, shall be deemed received on the earlier of the date of actual receipt or 3 Business Days after the deposit thereof in the mail; provided, that (i) notices sent by overnight courier service shall be deemed to have been given when received and (ii) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient), provided, further that notices to any Agent pursuant to Article II shall not be effective until received by such Agent.

(b) Electronic Communications.

(i) Each Agent and the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular

notices or communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agents, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Agents that it is incapable of receiving notices under such Article by electronic communication.

(ii) Unless the Administrative Agent otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (B) 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 (A), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (A) and (B) above, if such notice, email 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.

#### Section 12.02 Amendments, Etc.

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document (excluding the Fee Letter), and no consent to any departure by any Loan Party therefrom, shall in any event be effective unless the same shall be in writing and signed (x) in the case of an amendment, consent or waiver to cure any ambiguity, omission, defect or inconsistency or granting a new Lien for the benefit of the Agents and the Lenders or extending an existing Lien over additional property, by the Agents and the Borrower, (y) in the case of any other waiver or consent, by the Required Lenders (or by the Collateral Agent with the consent of the Required Lenders) and the Borrower and (z) in the case of any other amendment, by the Required Lenders (or by the Collateral Agent with the consent of the Required Lenders) and the Borrower, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall:

(i) increase the Commitment of any Lender, reduce the principal of, or interest on, the Loans payable to any Lender, reduce the amount of any fee payable for the account of any Lender (other than the imposition or rescission or default interest (which may be effected by consent of the Required Lenders)), or postpone or extend any scheduled date fixed for any payment (which shall in no event include any mandatory prepayment) of principal of, or interest or fees on, the Loans payable to any Lender, in each case, without the written consent of such Lender;

(ii) increase the Total Commitment without the written consent of each Lender;

(iii) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans that is required for the Lenders or any of them to take any action hereunder without the written consent of each Lender;

(iv) amend the definition of "Required Lenders" or "Pro Rata Share" without the written consent of each Lender;

(v) release all or a substantial portion of the Collateral (except as otherwise provided in this Agreement and the other Loan Documents), except as provided in Section 10.08, subordinate any Lien granted in favor of the Collateral Agent for the benefit of the Agents and the Lenders, or release the Borrower or any Guarantor (except as otherwise permitted by the Loan Documents), in each case, without the written consent of each Lender; or

(vi) amend, modify or waive Section 4.02, Section 4.03 or this Section 12.02 of this Agreement without the written consent of each Lender.

Notwithstanding the foregoing, (A) no amendment, waiver or consent shall, unless in writing and signed by an Agent, affect the rights or duties of such Agent (but not in its capacity as a Lender) under this Agreement or the other Loan Documents, (B) any amendment, waiver or consent to any provision of this Agreement (including Sections 4.01 and 4.02) that permits any Loan Party or any of their respective Affiliates to purchase Loans on a non-pro rata basis, become an eligible assignee pursuant to Section 12.07 and/or make offers to make optional prepayments on a non-pro rata basis shall require the prior written consent of the Required Lenders rather than the prior written consent of each Lender directly affected thereby and (C) the consent of the Borrower shall not be required to change any order of priority set forth in Section 2.05(d) and Section 4.03 Notwithstanding anything to the contrary herein, no Defaulting Lender or any of its respective Affiliates that is a Lender shall have any right to approve or disapprove any amendment, waiver or consent under the Loan Documents and any Loans held by such Person for purposes hereof shall be automatically deemed to be voted pro rata according to the Loans of all other Lenders in the aggregate (other than such Defaulting Lender, Loan Party or Affiliate).

(b) If any action to be taken by the Lenders hereunder requires the consent, authorization, or agreement of all of the Lenders or any Lender affected thereby, and a Lender (the "Holdout Lender") fails to give its consent, authorization, or agreement, then the Collateral Agent, upon at least 5 Business Days prior irrevocable notice to the Holdout Lender, may permanently replace the Holdout Lender with one or more substitute lenders (each, a "Replacement Lender"), and the Holdout Lender shall have no right to refuse to be replaced hereunder. Such notice to replace the Holdout Lender shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given. Prior to the effective date of such replacement, the Holdout Lender and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Holdout Lender being repaid its share of the outstanding Obligations without any premium or penalty of any kind whatsoever. If the Holdout Lender shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, the Holdout Lender shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Holdout Lender shall be made in accordance with the terms of Section 12.07. Until such time as the Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Holdout

Lender hereunder and under the other Loan Documents, the Holdout Lender shall remain obligated to make its Pro Rata Share of Loans.

Section 12.03 No Waiver; Remedies, Etc. No failure on the part of any Agent or any Lender to exercise, and no delay in exercising, any right hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right under any Loan Document preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Agents and the Lenders provided herein and in the other Loan Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Agents and the Lenders under any Loan Document against any party thereto are not conditional or contingent on any attempt by the Agents and the Lenders to exercise any of their rights under any other Loan Document against such party or against any other Person.

Section 12.04 Expenses; Taxes; Attorneys' Fees. The Borrower agrees to pay, without duplication (1) on the Effective Date and (2) after the Effective Date, within 15 Business Days after receipt of an invoice that sets forth such costs and expenses in reasonable detail, all reasonable and documented out-of-pocket costs and expenses incurred by or on behalf of each Agent (and, in the case of clauses (b) through (n) below, each Lender), regardless of whether the transactions contemplated hereby are consummated, including, without limitation, reasonable and documented fees, costs, client charges and expenses of counsel for each Agent and each Lender (but limited in each case of this Section 12.04, for the Agents and the Lenders taken as a whole, to (x) one primary counsel for each Agent and one primary counsel for the Lenders (taken as a whole), (y) one regulatory counsel and (z) one local counsel in each relevant jurisdiction or a single special counsel acting in multiple jurisdictions, in each case unless a conflict arises, in which case the reasonable and documented fees and out-of-pocket expenses of one conflicts counsel shall also be reimbursed by the Borrower, and for the Agents and the Lenders taken as a whole, to all other types of professionals or advisors other than counsel (such as financial advisors, investment bankers, accountants, etc.) to one firm of each such type of advisors to the Agents and the Lenders, taken as a whole) due diligence, periodic field audits, physical counts, investigations, searches and filings, monitoring of assets, appraisals of Collateral, the rating of the Loans, reasonable title searches and reviewing environmental assessments, miscellaneous disbursements, examination, travel, lodging and meals, arising from or relating to (but subject to any limitations set forth in Section 2.06(d)): (a) the negotiation, preparation, execution, delivery, performance and administration of this Agreement and the other Loan Documents (including, without limitation, the preparation of any additional Loan Documents pursuant to Section 7.01(b) or the review of any of the agreements, instruments and documents referred to in Section 7.01(f)), (b) any requested amendments, waivers or consents to this Agreement or the other Loan Documents whether or not such documents become effective or are given, (c) the preservation and protection of the Agents' or any of the Lenders' rights under this Agreement or the other Loan Documents, (d) the defense of any claim or action asserted or brought against any Agent or any Lender by any Person that arises from or relates to this Agreement, any other Loan Document, the Agents' or the Lenders' claims against any Loan Party, or any and all matters in connection therewith, (e) the commencement or defense of, or intervention in, any court proceeding arising from or related to this Agreement or any other Loan Document, (f) the filing of any petition, complaint, answer, motion or other pleading by any Agent or any Lender, or the taking of any action in respect of the Collateral or other security, in connection with this Agreement or any other Loan Document, except in each case

under clauses (d), (e) and (f), to the extent any such out-of-pocket costs and expenses are caused by the bad faith, gross negligence, willful misconduct of, or breach of a funding obligation under Loan Document by, such Person claiming reimbursement, as determined by a final, non-appealable judgment of a court of competent jurisdiction, (g) the protection, collection, lease, sale, taking possession of or liquidation of, any Collateral or other security in accordance with this Agreement or any other Loan Document, (h) any attempt to enforce any Lien or security interest in any Collateral or other security in accordance with this Agreement or any other Loan Document, (i) any attempt to collect from any Loan Party in accordance with this Agreement or any other Loan Document, (j) all liabilities and costs arising from or in connection with the past, present or future operations of any Loan Party involving any damage to real or personal property or natural resources or harm or injury alleged to have resulted from any Release of Hazardous Materials on, upon or into such property, (k) any Environmental Liabilities and Costs incurred in connection with the investigation, removal, cleanup and/or remediation of any Hazardous Materials present or arising out of the operations of any Facility of any Loan Party, (l) any Environmental Liabilities and Costs incurred in connection with any Environmental Lien or any Facility of a Loan Party, (m) the rating of the Loans by one or more rating agencies in connection with any Lender's Securitization or (n) the receipt by any Agent or any Lender of any advice from professionals with respect to any of the foregoing. Without limitation of the foregoing or any other provision of any Loan Document: (x) the Borrower agree to pay all stamp, document, transfer, recording or filing taxes or fees and similar impositions now or hereafter reasonably determined by any Agent or any Lender to be payable in connection with this Agreement or any other Loan Document, and the Borrower agree to save each Agent and each Lender harmless from and against any and all present or future claims, liabilities or losses with respect to or resulting from any omission to pay or delay in paying any such taxes, fees or impositions, (y) the Borrower agrees to pay all broker fees that may become due in connection with the transactions contemplated by this Agreement and the other Loan Documents, and (z) if the Borrower fails to perform any covenant or agreement contained herein or in any other Loan Document, any Agent may itself perform or cause performance of such covenant or agreement, and the expenses of such Agent incurred in connection therewith shall be reimbursed on demand by the Borrower. The obligations of the Borrower under this Section 12.04 shall survive the repayment of the Obligations and discharge of any Liens granted under the Loan Documents.

Section 12.05 Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, any Agent or any Lender may, and is hereby authorized to, at any time and from time to time, without notice to any Loan Party (any such notice being expressly waived by the Loan Parties) and to the fullest extent permitted by law, set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Agent or such Lender or any of their respective Affiliates to or for the credit or the account of any Loan Party against any and all obligations of the Loan Parties either now or hereafter existing under any Loan Document, irrespective of whether or not such Agent or such Lender shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured; provided that in the event that any Defaulting Lender shall exercise any such right of set-off, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 4.04 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agents and the Lenders, and (b) the Defaulting Lender shall provide promptly to the

Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of set-off. Each Agent and each Lender agrees to notify such Loan Party promptly after any such set-off and application made by such Agent or such Lender or any of their respective Affiliates provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Agents and the Lenders under this Section 12.05 are in addition to the other rights and remedies (including other rights of set-off) which the Agents and the Lenders may have under this Agreement or any other Loan Documents of law or otherwise.

Section 12.06 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 12.07 Assignments and Participations.

(a) This Agreement and the other Loan Documents shall be binding upon and inure to the benefit of each Loan Party and each Agent and each Lender and their respective successors and permitted assigns; provided, however, that none of the Loan Parties may assign or transfer any of its rights hereunder or under the other Loan Documents without the prior written consent of each Lender and any such assignment without the Lenders' prior written consent shall be null and void.

(b) Subject to the conditions set forth in clause (c) below, each Lender may assign to one or more other lenders or other entities all or a portion of its rights and obligations under this Agreement with respect to:

(i) all or a portion of its Term Loan Commitment and any Term Loan made by it with the written consent of the Collateral Agent, and

(ii) all or a portion of its Revolving Credit Commitment and the Revolving Loans made by it with the written consent of each Agent;

provided, however, that no written consent of the Collateral Agent or the Administrative Agent shall be required if such assignment is in connection with any merger, consolidation, sale, transfer, or other disposition of all or any substantial portion of the business or loan portfolio of such Lender.

(c) Assignments shall be subject to the following additional conditions:

(i) Each such assignment shall be in an amount which is at least \$5,000,000 or a multiple of \$1,000,000 in excess thereof (or the remainder of such Lender's Commitment) (except such minimum amount shall not apply to an assignment by a Lender to (A) a Lender, an Affiliate of such Lender or a Related Fund of such Lender or (B) a group of new Lenders, each of whom is an Affiliate or Related Fund of each other to the extent the aggregate amount to be assigned to all such new Lenders is at least \$5,000,000 or a multiple of \$1,000,000 in excess thereof);

(ii) The parties to each such assignment shall execute and deliver to the Collateral Agent (and the Administrative Agent, if applicable), for its acceptance, an Assignment and Acceptance, together with any promissory note subject to such assignment and such parties shall deliver to the Collateral Agent, for the benefit of the Collateral Agent, a processing and recordation fee of \$5,000 (except the payment of such fee shall not be required in connection with an assignment by a Lender to a Lender, an Affiliate of such Lender or a Related Fund of such Lender);

(iii) No such assignment shall be made to (A) any Loan Party or any of its Affiliates or (B) any Defaulting Lender or any of its Affiliates, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B); and

(iv) no assignments may be made to an Excluded Lender; provided, that, the Agents and the Lenders shall be entitled to rely upon the representations made by any proposed Lender in the Assignment and Acceptance that such proposed Lender is not an Excluded Lender without any further investigation.

(d) Upon such execution, delivery and acceptance, from and after the effective date specified in each Assignment and Acceptance and recordation on the Register, which effective date shall be at least 3 Business Days after the delivery thereof to the Collateral Agent (or such shorter period as shall be agreed to by the Collateral Agent and the parties to such assignment), (A) the assignee thereunder shall become a "Lender" hereunder and, in addition to the rights and obligations hereunder held by it immediately prior to such effective date, have the rights and obligations hereunder that have been assigned to it pursuant to such Assignment and Acceptance and (B) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, other than obligations which survive under Section 12.19, relinquish its rights and be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto).

(e) By executing and delivering an Assignment and Acceptance, the assigning Lender and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto; (ii) the assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or any of its Subsidiaries or the performance or observance by any Loan Party of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of this Agreement and the other Loan Documents, together with such other documents and information it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon the assigning Lender, any Agent or any Lender and based on such documents and information as it shall deem appropriate at the time, continue to make

its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents; (v) such assignee appoints and authorizes the Agents to take such action as agents on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Agents by the terms hereof and thereof, together with such powers as are reasonably incidental hereto and thereto; and (vi) such assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement and the other Loan Documents are required to be performed by it as a Lender.

(f) The Administrative Agent shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain, or cause to be maintained at the Payment Office, a copy of each Assignment and Acceptance delivered to and accepted by it and a register (the "Register") for the recordation of the names and addresses of the Lenders and the Commitments of, and the principal amount of the Loans (and stated interest thereon) (the "Registered Loans") owing to each Lender from time to time. The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the Agents and the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(g) Upon receipt by the Administrative Agent of a completed Assignment and Acceptance, and subject to any consent required from the Administrative Agent or the Collateral Agent pursuant to Section 12.07(b) (which consent of the applicable Agent must be evidenced by such Person's execution of an acceptance to such Assignment and Acceptance), the Administrative Agent shall accept such assignment, record the information contained therein in the Register (as adjusted to reflect any principal payments on or amounts capitalized and added to the principal balance of the Loans and/or Commitment reductions made subsequent to the effective date of the applicable assignment, as confirmed in writing by the corresponding assignor and assignee in conjunction with delivery of the assignment to the Administrative Agent) and provide to the Collateral Agent a copy of the fully executed Assignment and Acceptance.

(h) A Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered note shall expressly so provide). Any assignment or sale of all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered note, if any, evidencing the same), the Agents shall treat the Person in whose name such Registered Loan (and the registered note, if any, evidencing the same) is registered on the Register as the owner thereof for the purpose of receiving all payments thereon, notwithstanding notice to the contrary.

(i) In the event that any Lender sells participations in a Registered Loan, such Lender shall, acting for this purpose as a non-fiduciary agent on behalf of the Borrower, maintain, or cause to be maintained, a register, on which it enters the name of all participants in the Registered Loans held by it and the principal amount (and stated interest thereon) of the portion of the Registered Loan that is the subject of the participation (the "Participant Register"). A Registered Loan (and the registered note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register. The Participant Register shall be available for inspection by the Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(j) Any Non-U.S. Lender who purchases or is assigned or participates in any portion of such Registered Loan shall comply with Section 2.09(d).

(k) Each Lender may sell participations to one or more banks or other entities in or to all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of its Commitments the Loans made by it); provided, that (i) such Lender's obligations under this Agreement (including without limitation, its Commitments hereunder) and the other Loan Documents shall remain unchanged; (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents; (iii) a participant shall not be entitled to require such Lender to take or omit to take any action hereunder except (A) action directly effecting an extension of the maturity dates or decrease in the principal amount of the Loans participated in by such participant, (B) action directly effecting an extension of the due dates or a decrease in the rate of interest payable on the Loans in respect of the Commitments or Loans participated in by such participant or the fees payable in respect of the Commitments or Loans participated in by such participant under this Agreement, or (C) actions directly effecting a release of all or a substantial portion of the Collateral or any Loan Party (except as set forth in Section 10.08 of this Agreement or any other Loan Document) and (iv) no participation may be sold to an Excluded Lender (provided, that, the Agents and the Lenders shall be entitled to rely upon the representations made by any proposed Lender in the participation agreement with respect to such participation that such participant is not an Excluded Lender without any further investigation). The Loan Parties agree that each participant shall be entitled to the benefits of Section 2.09 and Section 2.10 of this Agreement with respect to its participation in any portion of the Commitments and the Loans as if it was a Lender.

(l) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or loans made to such Lender pursuant to securitization or similar credit facility (a "Securitization"); provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto. The Loan Parties shall cooperate with such Lender and its Affiliates to effect the Securitization including, without limitation, by providing such

information as may be reasonably requested by such Lender in connection with the rating of its Loans or the Securitization.

Section 12.08 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telecopier or electronic mail shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telecopier or electronic mail also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

Section 12.09 GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT) SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK.

Section 12.10 CONSENT TO JURISDICTION; SERVICE OF PROCESS AND VENUE. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK IN THE COUNTY OF NEW YORK OR OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. EACH LOAN PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS AND IN ANY SUCH ACTION OR PROCEEDING BY ANY MEANS PERMITTED BY APPLICABLE LAW, INCLUDING, WITHOUT LIMITATION, BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE BORROWER AT ITS ADDRESS FOR NOTICES AS SET FORTH IN SECTION 12.01, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING. THE LOAN PARTIES AGREE 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 HEREIN SHALL AFFECT THE RIGHT OF THE AGENTS AND THE LENDERS TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY LOAN PARTY IN ANY OTHER JURISDICTION. EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN

BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY LOAN PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH LOAN PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

Section 12.11 WAIVER OF JURY TRIAL, ETC. EACH LOAN PARTY, EACH AGENT AND EACH LENDER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION, PROCEEDINGS OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH LOAN PARTY CERTIFIES THAT NO OFFICER, REPRESENTATIVE, AGENT OR ATTORNEY OF ANY AGENT OR ANY LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ANY AGENT OR ANY LENDER WOULD NOT, IN THE EVENT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVERS. EACH LOAN PARTY HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE AGENTS AND THE LENDERS ENTERING INTO THIS AGREEMENT.

Section 12.12 Consent by the Agents and Lenders. Except as otherwise expressly set forth herein to the contrary or in any other Loan Document, if the consent, approval, satisfaction, determination, judgment, acceptance or similar action (an "Action") of any Agent or any Lender shall be permitted or required pursuant to any provision hereof or any provision of any other agreement to which any Loan Party is a party and to which any Agent or any Lender has succeeded thereto, such Action shall be required to be in writing and may be withheld or denied by such Agent or such Lender, in its sole discretion, with or without any reason, and without being subject to question or challenge on the grounds that such Action was not taken in good faith.

Section 12.13 No Party Deemed Drafter. Each of the parties hereto agrees that no party hereto shall be deemed to be the drafter of this Agreement.

Section 12.14 Reinstatement; Certain Payments. If any claim is ever made upon any Secured Party for repayment or recovery of any amount or amounts received by such Secured Party in payment or on account of any of the Obligations, such Secured Party shall give prompt notice of such claim to each other Agent and Lender and the Borrower, and if such Secured Party repays all or part of such amount by reason of (i) any judgment, decree or order of any court or administrative body having jurisdiction over such Secured Party or any of its property, or (ii) any good faith settlement or compromise of any such claim effected by such Secured Party with any such claimant, then and in such event each Loan Party agrees that (A) any such judgment, decree, order, settlement or

compromise shall be binding upon it notwithstanding the cancellation of any Indebtedness hereunder or under the other Loan Documents or the termination of this Agreement or the other Loan Documents, and (B) it shall be and remain liable to such Secured Party hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by such Secured Party.

Section 12.15 Indemnification; Limitation of Liability for Certain Damages.

(a) In addition to each Loan Party's other Obligations under this Agreement, each Loan Party agrees to, jointly and severally, defend, protect, indemnify and hold harmless each Secured Party and all of their respective Affiliates, officers, directors, employees, attorneys, consultants and agents (collectively called the "Indemnitees") from and against any and all losses, damages, liabilities, obligations, penalties, fees, reasonable costs and expenses (including, without limitation, reasonable attorneys' fees, costs and expenses) incurred by such Indemnitees, whether prior to or from and after the Effective Date, whether direct, indirect or consequential, as a result of or arising from or relating to or in connection with any of the following: (i) the negotiation, preparation, execution or performance or enforcement of this Agreement, any other Loan Document or of any other document executed in connection with the transactions contemplated by this Agreement, (ii) any Agent's or any Lender's furnishing of funds to the Borrower under this Agreement or the other Loan Documents, including, without limitation, the management of any such Loans or the Borrower's use of the proceeds thereof, (iii) the Agents and the Lenders relying on any instructions of the Borrower or the handling of the Loan Account and Collateral of the Borrower as herein provided, (iv) any matter relating to the financing transactions contemplated by this Agreement or the other Loan Documents or by any document executed in connection with the transactions contemplated by this Agreement or the other Loan Documents, or (v) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto (collectively, the "Indemnified Matters"); provided, however, that the Loan Parties shall not have any obligation to any Indemnitee under this subsection (a) for any Indemnified Matter caused by the gross negligence or willful misconduct of such Indemnitee, as determined by a final non-appealable judgment of a court of competent jurisdiction.

(b) The indemnification for all of the foregoing losses, damages, fees, costs and expenses of the Indemnitees set forth in this Section 12.15 are chargeable against the Loan Account to the extent not paid by a Loan Party within 5 Business Days following receipt in writing of a request for the payment and a reasonably detailed schedule of all amounts claimed. To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section 12.15 may be unenforceable because it is violative of any law or public policy, each Loan Party shall, jointly and severally, contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all Indemnified Matters incurred by the Indemnitees.

(c) No Loan Party shall assert, and each Loan Party hereby waives, any claim against the Indemnitees, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any other Loan Document or any agreement

or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each Loan Party hereby waives, releases and agrees not to sue upon any such claim or seek any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(d) The indemnities and waivers set forth in this Section 12.15 shall survive the repayment of the Obligations and discharge of any Liens granted under the Loan Documents.

Section 12.16 Records. The unpaid principal of and interest on the Loans, the interest rate or rates applicable to such unpaid principal and interest, the duration of such applicability, the Commitments, and the accrued and unpaid fees payable pursuant to Section 2.06 hereof, shall at all times be ascertained from the records of the Agents, which shall be conclusive and binding absent manifest error.

Section 12.17 Binding Effect. This Agreement shall become effective when it shall have been executed by each Loan Party, each Agent and each Lender and when the conditions precedent set forth in Section 5.01 hereof have been satisfied or waived in writing by the Agents, and thereafter shall be binding upon and inure to the benefit of each Loan Party, each Agent and each Lender, and their respective successors and assigns, except that the Loan Parties shall not have the right to assign their rights hereunder or any interest herein without the prior written consent of each Agent and each Lender, and any assignment by any Lender shall be governed by Section 12.07 hereof.

Section 12.18 Highest Lawful Rate. It is the intention of the parties hereto that each Agent and each Lender shall conform strictly to usury laws applicable to it. Accordingly, if the transactions contemplated hereby or by any other Loan Document would be usurious as to any Agent or any Lender under laws applicable to it (including the laws of the United States of America and the State of New York or any other jurisdiction whose laws may be mandatorily applicable to such Agent or such Lender notwithstanding the other provisions of this Agreement), then, in that event, notwithstanding anything to the contrary in this Agreement or any other Loan Document or any agreement entered into in connection with or as security for the Obligations, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under law applicable to any Agent or any Lender that is contracted for, taken, reserved, charged or received by such Agent or such Lender under this Agreement or any other Loan Document or agreements or otherwise in connection with the Obligations shall under no circumstances exceed the maximum amount allowed by such applicable law, any excess shall be canceled automatically and if theretofore paid shall be credited by such Agent or such Lender on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by such Agent or such Lender, as applicable, to the Borrower); and (ii) in the event that the maturity of the Obligations is accelerated by reason of any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to any Agent or any Lender may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall, subject to the last sentence of this Section 12.18, be canceled automatically by such Agent or such Lender, as applicable, as of the date of such acceleration or prepayment and, if theretofore paid, shall

be credited by such Agent or such Lender, as applicable, on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by such Agent or such Lender to the Borrower). All sums paid or agreed to be paid to any Agent or any Lender for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law applicable to such Agent or such Lender, be amortized, prorated, allocated and spread throughout the full term of the Loans until payment in full so that the rate or amount of interest on account of any Loans hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time (x) the amount of interest payable to any Agent or any Lender on any date shall be computed at the Highest Lawful Rate applicable to such Agent or such Lender pursuant to this Section 12.18 and (y) in respect of any subsequent interest computation period the amount of interest otherwise payable to such Agent or such Lender would be less than the amount of interest payable to such Agent or such Lender computed at the Highest Lawful Rate applicable to such Agent or such Lender, then the amount of interest payable to such Agent or such Lender in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to such Agent or such Lender until the total amount of interest payable to such Agent or such Lender shall equal the total amount of interest which would have been payable to such Agent or such Lender if the total amount of interest had been computed without giving effect to this Section 12.18.

For purposes of this Section 12.18, the term "applicable law" shall mean that law in effect from time to time and applicable to the loan transaction between the Borrower, on the one hand, and the Agents and the Lenders, on the other, that lawfully permits the charging and collection of the highest permissible, lawful non-usurious rate of interest on such loan transaction and this Agreement, including laws of the State of New York and, to the extent controlling, laws of the United States of America.

The right to accelerate the maturity of the Obligations does not include the right to accelerate any interest that has not accrued as of the date of acceleration.

Section 12.19 Confidentiality. Each Agent and each Lender agrees (on behalf of itself and each of its affiliates, directors, officers, employees and representatives) to keep confidential any information supplied to it by the Loan Parties in connection with this Agreement or the other Loan Documents (and which at the time of delivery is not, and does not thereafter become, publicly available or available to such Person from another source not known to be subject to a confidentiality obligation to such Person not to disclose such information), provided that nothing herein shall limit the disclosure by any Agent or any Lender of any such information (i) to its Affiliates and to its and its Affiliates' respective equityholders (including, without limitation, partners), directors, officers, employees, agents, trustees, counsel, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential in accordance with this Section 12.19); (ii) to any other party hereto; (iii) to any assignee or participant (or prospective assignee or participant) or any party to a Securitization so long as such assignee or participant (or prospective assignee or participant) or party to a Securitization first agrees, in writing, to be bound by confidentiality provisions similar in substance to this Section 12.19; (iv) to the extent required by any Requirement of Law or judicial process or as otherwise requested by any Governmental Authority having jurisdiction over such Person (including

any self-regulatory authority, such as the National Association of Insurance Commissioners or any similar organization, any examiner, auditor, or accountant or any nationally recognized rating agency or otherwise to the extent consisting of general portfolio information that does not identify Loan Parties); provided, unless specifically prohibited by applicable law or court order, each Agent and each Lender shall make reasonable efforts to notify the Borrower of any request by any Governmental Authority or representative thereof; (v) in connection with any litigation to which any Agent or any Lender is a party that arises from or relates to being a party to this Agreement or any other Loan Document; (vi) as is reasonably necessary in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; or (viii) with the consent of the Borrower.

Section 12.20 Public Disclosure. Each Loan Party agrees that neither it nor any of its Affiliates will now or in the future issue any press release or other public disclosure using the name of an Agent, any Lender or any of their respective Affiliates or referring to this Agreement or any other Loan Document without the prior written consent of such Agent or such Lender, except to the extent that such Loan Party or such Affiliate is required or it is advisable in the opinion of counsel to do so under applicable Requirements of Law (in which event, such Loan Party or such Affiliate will (a) except as provided in clause (b) below, consult with such Agent or such Lender before issuing such press release or other public disclosure or (b) solely in the event the issuance of any press release or other public disclosure is required under 17 C.F.R. § 243.100, use reasonable efforts to consult with such Agent or such Lender before issuing such press release or other public disclosure); provided, that the prior written consent of such Agent or such Lender shall be required only if such disclosure uses the name of such Agent, such Lender or any Affiliate thereof. Each Loan Party hereby authorizes each Agent and each Lender, after consultation with the Borrower, to advertise the closing of the transactions contemplated by this Agreement, and to make appropriate announcements of the existence and amount of the Commitments and the Loans entered into among the parties hereto, as such Agent or such Lender shall deem appropriate, including, without limitation, on a home page or similar place for dissemination of information on the Internet or worldwide web, or in announcements commonly known as tombstones, in such trade publications, business journals, newspapers of general circulation and to such selected parties as such Agent or such Lender shall deem appropriate.

Section 12.21 Integration. This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

Section 12.22 USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the entities composing the Borrower, which information includes the name and address of each such entity and other information that will allow such Lender to identify the entities composing the Borrower in accordance with the USA PATRIOT Act. Each Loan Party agrees to take such action and execute, acknowledge and deliver at its sole cost and expense, such instruments and documents as any Lender may reasonably require from time to time in order to enable such Lender to comply with the USA PATRIOT Act.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

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

BORROWER:

AVID TECHNOLOGY, INC.

By: /s/ Tony Callini

Name: Tony Callini

Title: Senior Vice President of Finance

GUARANTOR:

AVID TECHNOLOGY WORLDWIDE, INC.

By: /s/ Jason Duva

Name: Jason Duva

Title: Secretary

ADMINISTRATIVE AGENT AND  
COLLATERAL AGENT:  
CERBERUS BUSINESS FINANCE, LLC

By: /s/ Daniel Wolf  
Name: Daniel Wolf  
Title: President

LENDERS:

CERBERUS LEVERED LOAN  
OPPORTUNITIES FUND III, L.P.

By: Cerberus Levered Opportunities III GP,  
LLC

Its: General Partner

By: /s/ Daniel E. Wolf

Name: Daniel E. Wolf

Title: Senior Managing Director

CERBERUS NJ CREDIT OPPORTUNITIES  
FUND, L.P.

By: Cerberus NJ Credit Opportunities GP, LLC

Its: General Partner

By: /s/ Daniel E. Wolf

Name: Daniel E. Wolf

Title: Senior Managing Director

CERBERUS ASRS HOLDINGS LLC

By: /s/ Daniel E. Wolf

Name: Daniel E. Wolf

Title: Vice President

CERBERUS ICQ LEVERED LOAN  
OPPORTUNITIES FUND, L.P.

By: Cerberus ICQ Levered Opportunities GP,  
LLC

Its: General Partner

By: /s/ Daniel E. Wolf

Name: Daniel E. Wolf

Title: Senior Managing Director

CERBERUS KRS LEVERED LOAN  
OPPORTUNITIES FUND, L.P.

By: Cerberus KRS Levered Opportunities GP,  
LLC

Its: General Partner

By: /s/ Daniel E. Wolf

Name: Daniel E. Wolf

Title: Senior Managing Director

CERBERUS PSERS LEVERED LOAN  
OPPORTUNITIES FUND, L.P.

By: Cerberus PSERS Levered Opportunities GP,  
LLC

Its: General Partner

By: /s/ Daniel E. Wolf

Name: Daniel E. Wolf

Title: Senior Managing Director

**SUBSIDIARIES OF THE REGISTRANT AS OF DECEMBER 31, 2015**

AVID SYSTEMS, INC. (California)  
AVID CV LLC (Delaware)  
AVID TECHNOLOGY WORLDWIDE, INC. (Delaware)  
AVID AUDIO LLC (Delaware)  
ORAD INC. (Delaware)  
AVID TECHNOLOGY (AUSTRALIA) PTY LTD (Australia)  
AVID TECHNOLOGY CANADA CORP. (Canada)  
AVID TECHNOLOGY (BEIJING) CO., LTD (China)  
Shanghai Aohui Digi-Tec Limited (China)  
AVID TECHNOLOGY EUROPE LIMITED (England)  
EUPHONIX EUROPE LIMITED (England)  
Integrated Broadcast Services Limited (IBIS) (England)  
IVSM Limited (England)  
AVID TECHNOLOGY S.A.R.L. (France)  
Getris SAS (France)  
AVID TECHNOLOGY GmbH (Germany)  
AVID TECHNOLOGY HOLDING GmbH (Germany)  
AVID DEVELOPMENT GmbH (Germany)  
BLUE ORDER TECHNOLOGIES GmbH (Germany)  
Orad Hi-Tec Systems Deutschland GmbH (Germany)  
AVID NORTH ASIA LIMITED (Hong Kong)  
Orad Hi-Tec Systems (North Asia) Limited (Hong Kong)  
AVID TECHNOLOGY (INDIA) PRIVATE LIMITED (India)  
Jim Ltd. (Israel)  
Orad Hi-Tec Systems Ltd. (Israel)  
Oradnet Ltd. (Israel)  
DIGIDESIGN ITALY S.R.L. (Italy)  
AVID TECHNOLOGY K.K. (Japan)  
AVID TECHNOLOGY MEXICO, S. de R.L. de C.V. (Mexico)  
AVID GENERAL PARTNER B.V. (Netherlands)  
AVID TECHNOLOGY C.V. (Netherlands)  
AVID TECHNOLOGY HOLDING B.V. (Netherlands)  
AVID TECHNOLOGY INTERNATIONAL B.V. (Netherlands)  
Orad Netherlands B.V. (Netherlands)  
Orad Hi-Tec Systems Poland Sp. Z.o.o (Poland)  
AVID TECHNOLOGY (S.E. ASIA) PTE LTD (Singapore)  
AVID TECHNOLOGY S.L. (Spain)  
Orad Hi-Tec Systems Iberia SL (Spain)  
AVID NORDIC A.B. (Sweden)  
AVID TECHNOLOGY SERVICES TAIWAN CO., LTD (Taiwan)

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in Registration Statement Nos. 333-42569, 333-56631, 333-60181, 333-73321, 333-87539, 333-33674, 333-37952, 333-48338, 333-48340, 333-64016, 333-75470, 333-151202 and 333-200139 each on Form S-8 of our reports dated March 16, 2016, relating to the financial statements of Avid Technology, Inc., and the effectiveness of Avid Technology, Inc.'s internal control over financial reporting (which report expresses an adverse opinion on the effectiveness of Avid Technology, Inc.'s internal control over financial reporting because of material weaknesses), appearing in this Annual Report on Form 10-K of Avid Technology, Inc. for the year ended December 31, 2015.

**/s/ Deloitte & Touche LLP**

Boston, Massachusetts  
March 15, 2016

## CERTIFICATION

I, Louis Hernandez, Jr., certify that:

1. I have reviewed this Annual Report on Form 10-K of Avid Technology, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 15, 2016

/s/ Louis Hernandez, Jr.

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Louis Hernandez, Jr.

Chairman, Chief Executive Officer and President  
(Principal Executive Officer)

## CERTIFICATION

I, John W. Frederick, certify that:

1. I have reviewed this Annual Report on Form 10-K of Avid Technology, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 15, 2016

/s/ John W. Frederick

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John W. Frederick

Executive Vice President, Chief Financial Officer

and Chief Administrative Officer

*(Principal Financial Officer)*

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of Avid Technology, Inc. (the "Company") for the year ended December 31, 2015 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Louis Hernandez, Jr., Chief Executive Officer and President of the Company, and John W. Frederick, Executive Vice President, Chief Financial Officer and Chief Administrative Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. Section 1350, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 15, 2016

/s/ Louis Hernandez, Jr.

\_\_\_\_\_  
Louis Hernandez, Jr.

Chairman, Chief Executive Officer and President

*(Principal Executive Officer)*

Date: March 15, 2016

/s/ John W. Frederick

\_\_\_\_\_  
John W. Frederick

Executive Vice President, Chief Financial

Officer and Chief Administrative Officer

*(Principal Financial Officer)*

*A certification furnished pursuant to this item will not be deemed "filed" for purposes of Section 18 of the Exchange Act (15 U.S.C. 78r), or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.*